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101ST CONGRESS *1st Session* | SENATE | REPORT 101-174

AUTHORIZING APPROPRIATIONS FOR FISCAL YEARS 1990 AND 1991 FOR INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM [CIARDS], AND FOR OTHER PURPOSES

OCTOBER 26 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

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Mr. BOREN, from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 1324, as amended]

together with
additional views

The Select Committee on Intelligence, having previously reported S. 1324 as an original bill (Senate Report 101-78) authorizing appropriations for fiscal years 1990 and 1991 for Intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes; and having had such bill subsequently referred to the Select Committee for further consideration, reports favorably thereon with amendments, together with additional views, and recommends that the bill as amended do pass.

AMENDMENTS

1. That a new title VIII be added to the bill as follows:

TITLE VIII—INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY

SEC. 801. That the Central Intelligence Agency Act of 1949 (50 U.S.C. 403 et seq.) is amended by deleting all after section 16 and adding the following:

39-010

S423-2

"INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY

"SEC. 17. (a) PURPOSE: ESTABLISHMENT.—In order to—

"(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently, inspections, investigations, and audits relating to programs and operations of the Central Intelligence Agency;

"(2) provide leadership and recommend policies designed to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to detect fraud and abuse in such program and operations; and

"(3) provide a means for keeping the Director of Central Intelligence fully and currently informed about problems and deficiencies relating to the administration of such programs and operations, and the necessity for and the progress of corrective actions, and, in the manner prescribed by this section, to ensure the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (hereinafter referred to as 'the intelligence committees') are kept similarly informed of significant problems and deficiencies as well as the necessity for and the progress of corrective actions,

there is hereby established in the Central Intelligence Agency an Office of Inspector General.

"(b) APPOINTMENT; SUPERVISION; REMOVAL.—(1) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advise and consent of the Senate. This appointment shall be made without regard to political affilitation and shall be solely on the basis of integrity, compliance with the security standards of the Central Intelligence Agency, and prior experience in the field of foreign intelligence. Such appointment shall also be made on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, or public administration.

"(2) The Inspector General shall report directly to and be under the general supervision of the Director of Central Intelligence.

"(3) The Director may prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation if he determines that such prohibition is necessary to protect vital national security interests of the United States.

"(4) If the Director exercises any power under subsection (3), above, he shall submit an appropriately classified statement of the reasons for the exercise of such power within seven days to the intelligence committees. The Director shall advise the Inspector General at the time such report is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the In-

spector General with a copy of any such report. In such cases, the Inspector General may submit such comments to the intelligence committees that he may deem appropriate.

"(5) In accordance with 28 U.S.C. 535, the Director of Central Intelligence shall report to the Attorney General any information, allegation, or complaint received from the Inspector General, relating to violations of federal criminal law (Title 18, U.S.C. et seq.) involving any officer or employee of the Central Intelligence Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection 28 U.S.C. 535(b)(2). A copy of all such reports shall be furnished the Inspector General.

"(6) The Inspector General may be removed from office only by the President. The President shall immediately communicate in writing to the intelligence committees the reasons for any such removal.

"(c) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General appointed under this section—(1) to provide policy direction for and to conduct, supervise, and coordinate independently, the inspections, investigations, and audits relating to the programs and operations of the Central Intelligence Agency to assure they are conducted efficiently and in accordance with applicable law and regulations;

"(2) to keep the Director fully and currently informed concerning violations of law and regulations, fraud and other serious problems, abuses and deficiencies that may occur in such programs and operations, and to report the progress made in implementing corrective action;

"(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Office of Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

"(4) in the execution of his responsibilities, to comply with generally accepted government auditing standards.

"(d) SEMIANNUAL REPORTS; IMMEDIATE REPORTS OF SERIOUS OR FLAGRANT PROBLEMS; REPORTS OF FUNCTIONAL PROBLEMS.—(1) The Inspector General shall not later than June 30 and December 31 of each year, prepare and submit to the Director of Central Intelligence a classified semiannual report summarizing the activities of the Office during the immediately preceding six-month period. Within thirty days, the Director shall transmit such reports to the intelligence committees with any comments he may deem appropriate. Such reports shall, at a minimum, include:

"(i) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Central Intelligence Agency dis-

closed by the Office of Inspector General during the reporting period;

"(ii) a description of the recommendations for corrective action made by the Office of Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies identified in subparagraph (i), above;

"(iii) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

"(iv) a certification that the Inspector General has had full and direct access to all information relevant to the performance of his functions;

"(v) a description of all cases occurring during the reporting period where the Inspector General could not obtain documentary evidence relevant to any inspection, audit, or investigation due to his lack of authority to subpoena such information; and

"(vi) such recommendations as he may wish to make concerning legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Central Intelligence Agency, and to detect fraud and abuse in such programs and operations.

"(2) The Inspector General shall report immediately to the Director of Central Intelligence whenever he becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations. The Director shall transmit such report to the intelligence committees within seven calendar days, together with any comments he may deem appropriate.

"(3) In the event that—

"(i) the Inspector General is unable to resolve any differences with the Director of Central Intelligence affecting the execution of his duties or responsibilities;

"(ii) an investigation, inspection or audit carried out by the Inspector General should focus upon the Director or Acting Director; or

"(iii) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation,

the Inspector General shall immediately report such matter to the intelligence committees.

"(e) AUTHORITIES OF THE INSPECTOR GENERAL.—(1) the Inspector General shall have direct and prompt access to the Director, when necessary for any purpose pertaining to the performance of his duties.

"(2) The Inspector General shall have access to any employee or any employee of a contractor of the Central Intelligence Agency whose testimony is needed for the performance of his duties. In addition, he shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations or other material which relates to the programs and operations with respect to which the

Inspector General has responsibilities under this section. Failure on the part of any employee or contractor to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, to include loss of employment or the termination of an existing contractual relationship.

"(3) The Inspector General is authorized to receive and investigate complaints or information from an employee of the Central Intelligence Agency concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received—

"(i) The Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation; and

"(ii) No action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee of the Central Intelligence Agency in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

"(4) The Inspector General shall have authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of his duties, which oath affirmation, or affidavit when administered or taken by or before an employee of the Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

"(5) The Inspector General shall be provided with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices;

"(6) Subject to applicable law and the policies of the Director of Central Intelligence, the Inspector General shall select, appoint and employ such officers and employees as may be necessary to carry out his functions. In making such selections, the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable him to carry out his duties effectively. In this regard, it is the sense of Congress that the Inspector General should create within his organization a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of his duties; and

"(7) With the concurrence of the Director of Central Intelligence, the Inspector General may request such infor-

mation or assistance as may be necessary for carrying out his duties and responsibilities from any federal agency. Upon request of the Inspector General for such information or assistance, the head of the federal agency involved, shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the federal agency concerned, furnish to the Inspector General, or to an authorized designee, such information or assistance.

"(f) SEPARATE BUDGET ACCOUNT.—Beginning with fiscal year 1991, and in accordance with procedures to be issued by the Director of Central Intelligence in consultation with the intelligence committees, the Director of Central Intelligence shall include in the National Foreign Intelligence Program budget a separate account for the Office of Inspector General established pursuant to this section.

"(g) TRANSFER.—There shall be transferred to the Office of Inspector General of the Central Intelligence Agency, the office of that agency referred to as the 'Office of Inspector General.' The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorization, allocations, and other funds employed, held, used, arising from, or available to such 'Office of Inspector General' are hereby transferred to the Office of Inspector General established pursuant to this section."

2. That a new title IX be added to the bill as follows:

TITLE IX—INTELLIGENCE OVERSIGHT

SEC. 901. Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is hereby repealed.

SEC. 902. Section 502 of Title V of the National Security Act of 1947 (50 U.S.C. 413) is amended by striking the language contained therein, and substituting the following new sections:

"GENERAL PROVISIONS

"SEC. 501. (a) The President shall ensure that the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives (hereinafter in this title referred to as the 'intelligence committees') are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activities, as required by this title: *Provided, however,* That nothing contained in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of such activities: *And provided further, however,* That nothing contained herein shall be construed as a limitation on the power of the President to initiate such activities in a manner consistent with his powers conferred by the Constitution.

"(b) The President shall ensure that any illegal intelligence activity is reported to the intelligence committees,

as well as any corrective action that has been taken or is planned in connection with such illegal activity.

"(c) The President and the intelligence committees shall each establish procedures as may be necessary to carry out the provisions of this title.

"(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of Congress under this title. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

"(e) As used in this section, the term 'intelligence activities' includes, but is not limited to, 'covert actions', as defined in subsection 503(e), below.

"REPORTING INTELLIGENCE ACTIVITIES OTHER THAN COVERT ACTIONS

"SEC. 502. To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall:

"(a) keep the intelligence committees fully and currently informed of all intelligence activities, other than covert actions, as defined in subsection 503(e), below, which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and significant failures; and

"(b) furnish the intelligence committees any information or material concerning intelligence activities other than covert actions which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

"PRESIDENTIAL APPROVAL AND REPORTING COVERT ACTIONS

"SEC. 503. (a) The President may authorize the conduct of 'covert actions,' as defined herein below, by departments, agencies, or entities of the United States Government only when he determines such activities are necessary to support the foreign policy objectives of the United States and are important to the national security of the

United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

"(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than forty-eight hours after the decision is made;

"(2) A finding may not authorize or sanction covert actions, or any aspect of such activities, which have already occurred;

"(3) Each finding shall specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any signficant way in such activities: Provided, That any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation;

"(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies or regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States;

"(5) A finding may not authorize any action intended to influence United States political processes, public opinion, policies or media; and

"(6) A finding may not authorize any action which violates the Constitution of the United States or any statutes of the United States.

"(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods, or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in a covert action shall:

"(1) keep the intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

"(2) furnish to the intelligence community any information or material concerning covert actions which is in the possession, custody or control of any department, agency, or entity of the United States Government and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

"(c)(1) Except as provided by subsections (2) and (3) below, the President shall ensure that any finding approved, or determination made, pursuant to subsection (a), above, shall be reported to the intelligence committees prior to the initiation of the activities authorized.

"(2) On rare occasions when time is of the essence, the President may direct that covert actions be initiated prior to reporting such actions to the intelligence committees. On such occasions, the President shall fully inform the intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

"(3) When the President determines it is essential to meet extraordinary circumstances affecting vital interests of the United States, the President may limit the reporting of findings or determinations pursuant to subsections (1) and (2) of this section, to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. In such case, the Presdient shall provide a statement of the reasons for limiting access to such findings or determinations in accordance with this subsection.

"(4) In all cases reported pursuant to subsections (c)(1), (c)(2), and (c)(3), above, a copy of the finding, signed by the President, shall be provided to the chairman of each intelligence committee.

"(d) The President shall ensure that the intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(3), above, are notified of any significant change in a previously-approved covert action, or any significant undertaking pursuant to a previously-approved finding, in the same manner as findings are reported pursuant to subsection (c), above.

"(e) As used in this section, the term 'covert action' means an activity or activities conducted by an element of the United States Government to influence political, economic, or military conditions abroad so that the role of the United States Government is not intended to be apparent or acknowledged publicly, but does not include—

"(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of the United States Government programs, or administrative activities;

"(2) traditional diplomatic or military activities or routine support to such activities;

"(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

"(4) activities to provide routine support to the overt activities (other than activities described in paragraphs (1), (2), or (3)) of other United States Government agencies abroad."

SEC. 903. Section 502 of title V of the National Security Act of 1947 (50 U.S.C. 414) is redesignated as section 504 of such Act, and is amended by deleting the number "501" in subsection (a)(2) of such section and substituting in lieu thereof "503"; and is further amended by adding the following new subsection (d):

"(d) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government, may be expended, or may be directed to be expended, for any covert action, as defined in subsection 503(e), above, unless and until a Presidential finding required by subsection 503(a), above, has been signed or otherwise issued in accordance with that subsection."

SEC. 904. Section 503 of title V of the National Security Act of 1947 (50 U.S.C. 415) is redesignated as section 505 of such Act.

3. Beginning with line 3 on page 4 of the bill, strike lines 3 through 14 in their entirety.

4. In line 6 on page 3 of the bill, place a period after "Authorizations" and strike lines 7 and 8 in their entirety.

EXPLANATION OF AMENDMENTS

1. INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY

History of the legislation

The amendment agreed to by the Committee establishing an Inspector General for the Central Intelligence Agency is the culmination of the Select Committee's efforts during the last three years to improve the effectiveness and objectivity of the Office of Inspector General at the Central Intelligence Agency (CIA).

In November, 1987, the congressional committees investigating the Iran-Contra affair recommended, among other things, the creation of a statutory Inspector General for the CIA, stating that the present office at CIA "appears not to have had the manpower, resources or tenacity to acquire key facts uncovered by the other investigations [of the Iran-Contra affair]."

Reacting in part to this recommendation, the Committee began consideration of S. 1818, a bill introduced by Senator Specter then pending before the Committee, section 4 of which proposed creating an independent Inspector General for the CIA.

The Committee held two sets of public hearings on S. 1818, where the Inspector General provisions were considered. In the Committee's hearings on Oversight Legislation, held on November 13, 1987 and December 16, 1987, several witnesses were questioned with respect to the Inspector General provisions of the Specter bill. Later in the 100th Congress, on March 1, 1988, the Committee held

a third hearing devoted solely to consideration of the Inspector General provisions of S. 1818.

At the March 1 hearing, the Committee heard testimony from Charles A. Bowsher, the Comptroller General, U.S. General Accounting Office, who favored creation of a statutory Inspector General at CIA. The Committee also heard testimony from two statutory Inspectors General at agencies with responsibilities in the national security area: June Gibbs Brown, then Inspector General for the Department of Defense; and Sherman M. Funk, Inspector General for the Department of State. Both testified that the creation of a statutory Inspector General at their respective departments had strengthened their respective roles and functions, and had not jeopardized national security interests.

Opposing the bill was Director of Central Intelligence William H. Webster. In his testimony, Director Webster, who then had been in his position for eight months, outlined the changes he had made and proposed to make to improve the effectiveness of the Inspector General. These included elevating the rank of the Inspector General and enlarging the size of his staff, and raising the standards and quality of performance. He concluded by asking the Committee "that we be given the opportunity to demonstrate the effectiveness of these changes . . . I am convinced that neither I, nor the Congress, will be disappointed."

Largely on the basis of the DCI's request, the Committee deferred action on the Inspector General provisions of S. 1818, to permit enough time for the actions initiated by the Director to bear fruit. The Committee did, however, in the context of its action on the Intelligence Authorization Act for Fiscal Year 1989, take several actions designed to improve the effectiveness and objectivity of the Inspector General as well as improve congressional awareness of the Inspector General's activities. Key provisions included:

A requirement that the DCI report to the Committees regarding the selection and removal of an Inspector General;

A requirement that the DCI report to the Committees any decision to prohibit the Inspector General from initiating or completing any audit or investigation, or any other decision that substantially affected the ability of the Inspector General to carry out his responsibilities; and

A requirement to furnish semiannual reports to the Committees summarizing the activities of the Office of Inspector General for the preceding six months.

Since this measure was enacted, the Committee has received two of the semi-annual reports called for the legislation. On the basis of these reports and other Inspector General reports on specific subjects to which the Committee was provided access, the Committee has been able to assess the overall work of the office. The Committee's newly created audit staff also has provided new and more thorough insights into the operations of the Inspector General than the Committee had previously had. Finally, the Committee has had several occasions in the last two years to ask the DCI to utilize the Inspector General to investigate certain allegations which had come to the Committee's attention. These investigations have also given the Committee additional opportunities to evaluate the work of the CIA Inspector General. In short, the Committee believes it

has had an opportunity over the last two years to adequately evaluate the effectiveness and objectivity of the CIA Inspector General.

Senator Specter introduced a new bill, S. 199, on January 25, 1989, incorporating most of the provisions of S. 1818. This bill was referred to the Select Committee on Intelligence. On the basis of the Committee's previous consideration of almost identical legislation in the 100th Congress, S. 1818, and on the basis of its ongoing evaluation of the work of the CIA Inspector General, the Committee believes that such legislation is needed to improve the performance and effectiveness of that vital element of the oversight process, from the standpoint of both assisting the DCI as well as assisting the oversight committees of the Congress in carrying out their respective responsibilities.

Objectives of the legislation

The amendment would replace section 17 of the CIA Act of 1949, enacted as part of the Intelligence Authorization Act for Fiscal Year 1989, with an entirely new section, creating by statute an Office of Inspector General within CIA. For the reasons stated in section IV, below, the Committee believes an amendment to the CIA Act of 1949 is a preferable method of accomplishing this objective than an amendment to the Inspector General Act of 1978. In many respects, however, the provisions of the Inspector General act of 1978 have served as a model for the Committee in the development of this legislation.

The first objective of the amendment is to provide for the appointment and removal of an Inspector General at CIA. The bill provides that an Inspector General at CIA will be appointed by the President subject to confirmation by the Senate, and that he may be removed from office only by the President. Although the bill is silent in terms of the reasons for removing such Inspector General, the President is required to communicate such reasons in writing to the two intelligence committees.

The amendment also establishes certain general requirements to be met by the appointment process. Not only must the appointment be made without regard to political affiliation, it must result in the selection of a person who has had experience in the field of foreign intelligence as well as experience in managment, legal, or financial positions. The Committee is of the firm view that an Inspector general at CIA can only succeed if he or she has prior knowledge of, and experience with, U.S. intelligence activities at senior levels. This is not a position where persons with no previous experience in the foreign intelligence field can be immediately effective at this level of responsibility.

The amendment also clarifies the relationship between the DCI and the Inspector General, and between the DCI, Inspector General, and the congressional oversight committees. The bill clearly provides that the Inspector General of CIA shall report directly to the DCI and shall be under his general supervision. The DCI may prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation, if he determines such prohibition is necessary to protect vital security interests of the United States, but in these circumstances the DCI must submit a statement of his reasons for such action within seven days to the

two intelligence committees. The Inspector General is to be given an opportunity in such circumstances to submit appropriate comments to the committees if he so desires.

It is anticipated that only in the most sensitive matters will the DCI exercise this statutory authority to prohibit such an audit or investigation. The intelligence committees will carefully review every such exercise of the DCI's authority. Based on the experience at the Department of Defense, where similar provisions have never been formally utilized in seven years of Inspector General operations, such intervention should be rare indeed. This DOD experience demonstrates that if a high level of communication and trust can be established between the DCI and the Inspector General such formal refusals will be exceedingly rare.

The legislation also sets forth the general responsibilities of the Inspector General to provide policy for the conduct of inspections, investigations, and audits within CIA as well as carry out such activities to ensure that the programs and operations of CIA are conducted efficiently and in accordance with applicable law and regulations. He is required by the bill to keep the DCI fully and currently informed as to his findings, and to report on progress made in implementing appropriate corrective actions. In carrying out these responsibilities, the Inspector General is obligated to take due regard for the protection of intelligence sources and methods, and to comply with generally accepted government auditing standards.

The amendment also requires that semi-annual reports of the Inspector General be furnished the congressional intelligence committees which incorporate and expand upon the requirements in the Intelligence Authorization Act for Fiscal Year 1989. Such reports are required to be made through the DCI who shall forward them with any comments he may wish to make. The amendment also requires reports of serious or flagrant abuses to be made by the Inspector through the DCI to the committees within seven days, and sets forth certain limited circumstances where the Inspector General is required to report to the committees directly.

The legislation also provides specific authorities for the Inspector General, many of which are patterned after similar responsibilities in the Inspector General Act of 1978: right of direct and prompt access to the Director; right to access to Agency personnel (including contractors) and records; right to investigate employee complaints; authority to administer oaths; right to adequate office space and administrative support; right to hire his own staff, subject to the DCI's personnel and security policies; and, with the concurrence of the DCI, to request assistance from other federal agencies.

Finally, the amendment requires the DCI to establish a separate budget account for the Inspector General, and authorizes a transfer of the existing personnel and assets of the Office of Inspector General to the new office created pursuant to this statute.

General statement

The Committee believes that the creation of an independent statutory Inspector General at CIA will improve the effectiveness and objectivity of that office. In reviewing the work of the existing

Office of Inspector General, the Committee finds that it has been uneven. While some reports appear to have been based on through investigation and to have reached objective conclusions, too many have appeared otherwise. The Committee primarily attributes these shortcomings not the competence of those involved, but rather to the institutional limitations of the office as it currently operates. The existing Inspector General is a member of the CIA management team, at the same level as the heads of the various Directorates within the Agency. His mandate is defined in the Agency's internal regulations and cooperation from Agency components is only a matter of internal administration. There is no statutory mandate for the office, and the incumbent, as other CIA employees, serves at the discretion of the Director. In addition, performance of the office has been affected by an over-reliance upon CIA employees who are rotated into the office as inspectors and investigators who have no previous training or experience in such work, and who must return to positions in other parts of the Agency once their tour with the Inspector General is completed. It is difficult to expect thoroughness and objectivity with these inherent institutional constraints.

This is not to say that the Committee believes that the Office of Inspector General can operate effectively without staff who is familiar with, or has participated in, Agency programs and operations. Certainly, such experience must form an integral part of the Office's capability. But over-reliance upon such personnel does not promote the objectivity and thoroughness that is needed.

The Committee can also not ignore the experience of other departments and agencies who have established such offices under the Inspector General Act of 1978, as amended. Twenty-five statutory Inspectors General have been appointed by the President pursuant to that statute. With the exception of CIA, all major departments and agencies of the federal government, including those with responsibilities in the national security area, are included in that number. It appears that the appointment of Inspectors General by the President with Senate confirmation, and with certain independent responsibilities to the Congress, has, in fact, bolstered the status of such offices within other departments and agencies and has led to improved performance.

We do believe, nonetheless, that CIA presents a unique case in point. The sensitivity of the activities undertaken by CIA and the need to ensure their protection, the limitations on CIA domestic activities, and it's unique oversight relationship with the Congress, necessarily dictate an Inspector General with somewhat different duties, powers, and relationships than those of other departments and agencies. While the Committee believes that certain provisions of the 1978 statute can serve as useful models for the CIA Inspector General, it believes that CIA's unique functions and authorities justisfy considerable differences from the requirements of that statute. These are explained below. In view of these differences and their relationship to CIA's "organic" authorities, the Committee believes the provisions of the legislation establishing an Inspector General at CIA more properly belong in the CIA Act of 1949, rather than the Inspector General Act of 1978.

A. The Inspector General Act of 1978

The Inspector General Act of 1978, as amended, provides for the establishment of offices of Inspector Generals at the vast majority of federal departments and agencies. Such offices are established "to conduct and supervise audits and investigations . . . to promote economy, efficiency, and effectiveness . . . and to prevent and detect fraud and abuse" in agency programs and operations.

Under the statute, Inspector Generals are appointed by the President, subject to Senate confirmation, and may be removed only by the President who must report his reasons to both Houses of Congress. They report to the agency head and work under his supervision or the supervision of the next ranking official, but at lower level.

For all but a few agencies, the agency head is expressly prohibited from interfering in any way with audits or investigations of the Inspector General, including the issuance of subpoenas for documents or things. In exceptional cases (e.g. the Departments of Defense, Treasury, Justice), the department head is empowered to prohibit Inspector General audits and investigations, including prohibiting the issuance of subpoenas, pursuant to carefully enumerated exceptions tailored to the activities or mission of each department. Under such circumstances, however, the Inspector General is required to file a report within thirty days with the Senate Governmental Affairs Committee, the House Government Operations Committee, the appropriate authorizing committees, and appropriate additional committees of both Houses. The department or agency head involved then has another thirty days to file a report explaining the reasons for his action.

Inspectors General are required to keep agency heads "fully and currently informed" of their activities and findings. They also have a statutory obligation to report to the Attorney General any case where they have reasonable grounds to believe there has been a violation of federal criminal law.

Inspector Generals are required to publish semi-annual reports describing their activities for the preceding six-month period. These are furnished to the agency head who transmits them to the appropriate congressional committees, together with any appropriate comments, within thirty days. Within sixty days thereafter, the agency head is required to make such reports available to the public, although the statute makes clear that classified information need not be disclosed.

Inspector Generals are also required to report immediately to the agency head any "particularly serious or flagrant problems, abuses, or deficiencies" which may be uncovered. The agency head is required to forward such reports to the appropriate congressional committees within seven days of receipt.

In terms of authorities, inspector generals are, among other things, empowered by the 1978 Act to:

have access to all information held by the agency;

request assistance from other federal, state or local governmental entities;

subpoena documentary evidence and to seek enforcement of such subpoenas in U.S. district courts with the concurrence of the Department of Justice;

have direct and prompt access to the agency head;

administer oaths and take affidavits from any person necessary to the performance of his functions;

hire and control their own employees; and

enter into contracts for service to carry out their responsibilities.

B. Authorities and responsibilities of the Director of Central Intelligence

The Director of Central Intelligence (DCI) serves as both coordinator of U.S. intelligence activities and as Director of the Central Intelligence Agency. As Director of the CIA, he is charged by law and Executive order with collecting, analyzing, and disseminating intelligence and is given primary responsibility to implement covert actions approved by the President. To carry out these sensitive responsibilities, the Director is given extraordinary and unique authorities by the National Security Act of 1947 and the CIA Act of 1949, both in terms of hiring and managing personnel and in terms of extraordinary authorities necessary for the execution of Agency operations. While having unique and extraordinary authorities to carry out operations abroad, the CIA is specifically limited by law in terms of its domestic activities. The National Security Act of 1947 explicitly provides that the CIA "shall have no police, subpoena, law-enforcement powers, or internal security functions." There is no exception to this proscription in any other statute.

Under the National Security Act of 1947, the DCI is charged with the protection of intelligence source and methods from unauthorized disclosure (50 U.S.C. 403(d)). In furtherance of this responsibility, he is given discretionary authority to terminate the employment of any officer or employee of the CIA when he deems it necesary or advisable in the interests of the United States (50 U.S.C. 403(c)). Moreover, he is expressly exempted from any law which may require the publication or disclosure of the organization, functions, names, official titles, salaries, of numbers of personnel employed by the CIA (50 U.S.C. 403g).

The DCI is also charged by law (28 U.S.C. 535) and by Executive order 12333 to report to the Attorney General all violations of federal law which are brought to his attention. These obligations are carried out in accordance with procedures issued by the Attorney General which recognize the need to protect intelligence sources and methods.

The DCI (as Director of the CIA) also has extraordinary statutory reporting responsibilities to the two Intelligence Committees of the Congress. He is obligated in accordance with section 501(a) of the National Security act of 1947 to keep these Committees "fully and currently informed of all intelligence activities which are the responsibility of [CIA] . . . including any significant anticipated intelligence activity." He is also obligated to "furnish any information or material concerning intelligence activities which is in the possession, custody, or control of [CIA] . . . which is requested by

either of the intelligence committees in order to carry out its authorized responsibilities." Finally, he is required to report to the intelligence committees in a timely fashion "any illegal intelligence activity or significant intelligence failure [by CIA] and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure."

C. Relationship of DCI's authorities to the authorities of a statutory Inspector General

In general, the Committee believes that the authorities provided a statutory Inspector General at CIA should not conflict with or exceed the authorities given the DCI. Rather, they should be consistent with, and be exercised within the context of, the DCI's overall responsibilities and authorities.

Thus, the legislation as reported by the Committee does not adopt for the Inspector General at CIA all of the authorities granted Inspectors General at other departments and agencies under the provisions of the Inspector General Act of 1978 ("IG Act"), or, in some cases, modifies those authorities to comport with the authorities and responsibilities of the DCI. To cite specific differences:

The Inspector General under the IG Act reports to the agency head or next ranking official. Under the Committee amendment, he would report to the agency head only. The Committee believes this is necessary not only because of certain authorities which can only be exercised by the DCI, but also because of the DCI's obligations to the congressional oversight committees.

Under the IG Act, the Inspector General must report to the appropriate committees of Congress within 30 days any case in which the agency head prohibits him from acting. The agency head then has 30 days to submit a statement of his reasons. Under the Committee amendment, the obligation is placed on the DCI to report such instances within seven days to the two intelligence committees, with the Inspector General being permitted to comment upon the DCI's action. The Committee believes that because such cases are likely to entail circumstances of extraordinary sensitivity, such reports should, in recognition of the DCI's responsibility to protect intelligence sources and methods, be initiated by the DCI and be submitted only to the two intelligence committees, and should be accomplished expeditiously rather than entailing a two-month process.

An Inspector General established under the IG Act is required to report suspected violations of law to the Attorney General. There is no similar requirement in the Committee amendment for the CIA Inspector General. Again, the Committee believes that out of recognition of the DCI's responsibility to protect intelligence sources and methods, that the obligation to make such reports should remain with the DCI without legislating a separate requirement for such reports from the Inspector General. Any failure of the DCI to make such reports, however, could be raised by the Inspector General directly with the committees. At present, the DCI is required by both law (28 U.S.C. 535) and Executive order 12333 to make such re-

ports to the Attorney General, which would include any suspected violation of law which may be reported to him by the Inspector General, in accordance with guidelines issued by the Attorney General. He is obligated by the National Security Act of 1947 to make reports of all illegal intelligence activities to the two intelligence committees.

While the amendment does require the CIA Inspector General to submit semiannual reports, these are limited to the two intelligence committees only and there is no requirement for publication.

Inspectors General under the IG Act have the power to subpoena documentary evidence. The Committee amendment does not grant subpoena power to the CIA Inspector General, but rather makes it clear that failure to cooperate with the Inspector General by providing testimonial or documentary evidence is grounds for administrative action to include termination of employment or contractual relationship with the CIA. The legislation also provides that the Inspector General should report immediately to the committees any case where he is unable to obtain documentary evidence in an investigtion involving serious misconduct so that the Committtees may evaluate alternative courses of action.

Since the enactment of the National Security Act of 1947, CIA has been barred from possessing subpoena power. This provision has, in fact, been a key limitation on CIA's authority to intrude into domestic affairs and to require information from persons who were not affiliated with the Agency. The Committee believes that any exception to this limitation should be made only for very compelling reasons. On the basis of the record before it, the Committee is not persuaded the requirements of the CIA Inspector General justify such an exception to this important and longstanding safeguard. The vast majority of information needed by the CIA Inspector General would come from employees or persons in a contractual relationship with the Agency. Moreover, given the practical difficulty that the CIA Inspector General would have in enforcing such subpoenas in court (since its operations would necessarily be exposed), it is unlikely the CIA would ordinarily avail itself of this authority. Moreover, if evidence is needed by the CIA Inspector General from persons who are not affiliated with CIA and refuse to provide such information voluntarily, the CIA Inspector General may be able to obtain the assistance of the Department of Justice in seeking subpoenas on its behalf.

The Committee is willing to reconsider the need for this authority in the future if it can be justified. With this in mind, the bill requires the Inspector General, in his semiannual reports to the committees, to document every case where the lack of subpoena authority prohibits him from obtaining documentary evidence relevant to an investigation, audit, or inspection, and permits him to report immediately to the intelligence committees in certain cases.

Inspectors General under the IG Act are given authority to seek assistance directly from other federal, state, and local agencies. The Committee amendment provides that such re-

quests are to be permitted only with the concurrence of the DCI, and should be limited to federal agencies. Inasmuch as such requests may necessitate revealing intelligence sources and methods to other agencies, the Committee believes they should be scrutinized by the DCI before being made to other agencies. If the Inspector General had serious disagreement with the DCI concerning the handling of such a request, the matter could be reported by the Inspector General directly to the intelligence committees.

Under the IG Act, Inspectors General are given authority to hire and manage their own staffs. Under the Committee amendment, the CIA Inspector General is also given power to select his own staff but may only employ persons who meet the DCI's personnel and security requirements. Such personnel would also remain subject to the DCI's ultimate discretionary authority to terminate CIA employees. Again, the Committee believes that in recognition of the DCI's responsibility to protect intelligence sources and methods, the CIA Inspector General's authority to select and retain employees must ultimately be subject to the DCI's personnel and security authorities. In any instance where the DCI believes it is necessary to terminate the employment of any Inspector General office employees, he shall inform the Inspector General of the basis for that decision. If the Inspector General disagrees with the decision of the DCI, he shall inform the intelligence committees of the disagreement pursuant to this statute.

Finally, under the IG Act, Inspectors General are authorized to contract for services to assist them in carrying out their responsibilities. The Committee amendment makes no specific provision for this. Accordingly, the CIA Inspector General would be left to the DCI's policies and procedures in terms of obtaining contractor assistance. Again, the Committee believes the DCI's responsibility for protecting intelligence sources and methods dictates such result.

In conclusion, because the Committee is of the view that the CIA Inspector General must operate under somewhat different and constrained provisions than Inspectors General at other departments and agencies, and because of the unique congressional oversight arrangements for CIA which were established by the Intelligence Oversight Act of 1980, the Committee believes the establishment of a statutory Inspector General at CIA should not come under the provisions of the Inspector General Act of 1978, but rather should be made part of the "organic" statute setting forth the authorities of the Agency.

2. INTELLIGENCE OVERSIGHT

History of the legislation

The amendment agreed to by the Committee would enact portions of S. 1721, a bill introduced in the 100th Congress which passed by the Senate on March 15, 1988 by a vote of 71–19, which had not previously raised objections from the Executive branch. The amendment also incorporates a definition of the term "covert action", developed by the House Permanent Select Committee on

Intelligence in the course of its consultations with regard to the counterpart bill in the House of Representatives. The Committee believes this definition is an improvement upon the definition in the earlier Senate bill.

S. 1721 was introduced on September 25, 1987, by Senator Cohen on behalf of himself and Senators Boren, Inouye, Mitchell, Bentsen, DeConcini, Murkowski, and Rudman. The formal introduction of this legislation came many months after the Intelligence Committee had begun an intensive examination of the need to clarify and strengthen the statutory provisions for intelligence oversight. That process began in the fall of 1986, with the initial Committee inquiry into the Iran-Contra affair. It continued through the Committee's hearings on the nomination of a new Director of Central Intelligence and formal Committee recommendations to the Administration for changes in Executive branch procedures, many of which were embodied in a presidential directive (NADD 286). Through its overlapping Members and staff, the Intelligence Committee benefited directly from the work of the temporary Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. When that Committee completed its hearings and issued its report, the Intelligence Committee immediately began legislative hearings and consultations with Executive branch officials and outside experts leading to the mark-up of S. 1721.

A. Preliminary Iran-Contra inquiry

Following public disclosure of the Iran arms sales in November 1986, the Committee began a thorough review of how the laws and procedures for covert action might have been violated, disregarded or misinterpreted. Director of Central Intelligence William Casey testified initially on these issues on November 21, 1986. After the Attorney General's announcement on November 25, 1986, disclosed the diversion of Iran arms sale proceeds to the Contras, the Committee initialed a formal preliminary investigation which began on December 1, 1986, and was completed with a public report on January 29, 1987, to the new Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. S. Rep. No. 100–7.

The Committee's preliminary inquiry examined in depth the circumstances in which the statutes, Executive orders, and procedures for covert action approval and oversight were interpreted and applied in the Iran-Contra affair. Witnesses who discussed these issues included the Secretaries of State and Defense, the Attorney General, the President's Chief of Staff, one former National Security Advisor to the President, the Deputy Director of Central Intelligence and his predecessor, the CIA General Counsel and his predecessor, the CIA Deputy Director for Operations, the Chief of the CIA Central America Task Force, the CIA Comptroller General, the CIA Inspector General, the Assistant Secretary of State for Latin American Affairs, the Assistant Secretary of Defense for International Security Affairs, and other Executive branch officials. While this testimony was not public, it remains part of the legislative record of the Committee's consideration of this title.

The Committee's preliminary report identified key factual issues that needed to be addressed by the Select Iran-Contra Committee, whose ten members included four senior members of the Intelli-

gence Committee—the Chairman, the Vice Chairman, and Senators Nunn and Hatch. Through this overlapping arrangement, which included significant involvement by Committee staff as well, the Intelligence Committee was able to benefit throughout the year from the findings and deliberations of the Iran-Contra Committee.

B. DCI confirmation hearings

At the outset, it became from the Intelligence Committee's intensive preliminary Iran-Contra inquiry that significant changes were required in the covert action oversight framework. Accordingly, the Committee discussed these issues at the hearings on the nomination of Robert Gates as Director of Central Intelligence in February, 1987. (Nomination of Robert Gates, Hearings before the Senate Select Committee on Intelligence, 1987.) After his nomination was withdrawn, the Committee again raised these issues with Judge William H. Webster at his confirmation hearings as DCI in April, 1987.

Under questioning from Committee members, Judge Webster agreed that Presidential findings for covert action should be in writing and should not be retroactive. He also agreed that covert action by components of the government other than the CIA, such as the National Security Council staff, should be reported to the Intelligence Committees in the same manner as CIA operations. Most importantly, he agreed that he would recommend to the President against withholding notification under any but most extreme circumstances involving life and death and then only for a few days. (Nomination of William H. Webster, Hearings before the Senate Select Committee on Intelligence, 1987, pp. 64, 68–69, 158.)

C. Letter to the national security advisor

At the same time as the Iran-Contra Committee began its hearings, the Intelligence Committee proceeded to develop a set of recommendations for immediate action by the Executive branch under current law that might also serve as the basis for legislation. At meetings in June, 1987, the Committee, after much discussion and detailed deliberation, approved a letter to the President's National Security Advisor, Frank Carlucci, setting forth detailed proposals for improved covert action approval and reporting procedures. These later became essential features of S. 1721 and this title. The President's response to that letter on August 7, 1987, was printed in the Congressional Record when S. 1721 was introduced on September 25, 1987.

The Committee's letter of July 1, 1987, to National Security Advisor Carlucci recommended that covert action approval and reporting procedures ought to incorporate the following points, which are key provisions of S. 1721 and this title:

> In all cases there shall be a finding by the President prior to the initiation of any covert action. No finding may retroactively authorize or sanction any covert action not undertaken pursuant to, and subsequent to, a finding specifically approved by the President.
>
> To ensure accountability and to provide unambiguous direction for actions taken within the Executive branch,

there will be no "oral" findings unless the President determines that immediate action is required of the United States to deal with an emergency situation affecting vital U.S. interests, and time does not permit the drafting of a written finding. In these circumstances, the "oral" finding shall be immediately reduced to writing and signed by the President. The written finding shall include the President's reason for first proceeding with an "oral" finding.

Each finding approved by the President shall specify any and all entities within the Executive branch that will fund or otherwise participate in any in carrying out the activities which are authorized, and shall set forth the nature and extent of such participation. The President shall be responsible for reporting all findings to the Intelligence Committees, regardless of which entity or entities within the Executive branch are designated to participate in the activity in question. At the time such reports are made, the President shall also identify to the Committee any third country and, either by name or descriptive phrase, any private entity or person, which the President anticipates will fund or otherwise participate in any way in carrying out the activities which are authorized and shall set forth the nature and extent of such participation. Any changes in such plans or authorizations shall be reported to the Intelligence Committees prior to implementation.

Where the President determines to withhold prior notice of covert actions from the two Intelligence Committees, such prior notice may be withheld only in accordance with specific procedures. Such procedures shall, at a minimum require that the President, or his representative, shall, in all cases without exception, notify contemporaneously, and in no event later than 48 hours, the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House, and the Chairman and Vice Chairman of the two Intelligence Committees of the existence of the finding, which notification shall include a summary of the actions authorized pursuant thereto and a statement of the reasons for not giving prior notice.

D. NSDD 286

The Committee's dialogue with the Administration through National Security Advisor Carlucci, did not result in full agreement on new Executive branch procedures. These extensive consultations did, however, contribute to the substantive provisions of a new National Security Decision Directive on Special Activities (NSDD 286) issued by the President to clarify the rules by which covert actions are reviewed, approved, and reported to Congress. As a result, because much of the NSDD was developed in close consultation with the Committee, many of its provisions were reflected in S. 1721.

This can be illustrated by comparing several provisions of the bill and the Presidential directive:

S. 1721 required that findings be in writing and could not be made retroactive. S. 1721 provided that findings

may not violate existing statutes. Similar requirements are contained in the NSDD.

S. 1721 made clear that a Presidential finding must be obtained before any department, agency, or other entity of the U.S. Government could conduct a special activity. The Presidential directive affirms this principle.

S. 1721 required that the Intelligence Committees be informed when a special activity involved another U.S. Government agency or a third party who was not under the supervision of a U.S. Government agency. The NSDD requires that these issues be addressed in a statement accompanying the finding.

Of course, however, a Presidential directive is not the same as a statute and can be changed without warning by another President. Indeed, when the President's Chief of Staff, Donald Regan, was asked during the Committee's preliminary Iran-Contra inquiry about the previous NSDD procedures for approval of special activities, in effect when the Iran arms sales were approved, he professed ignorance of that NSDD. S. 1721 would have ensured that the requirements put in place by the Presidential directive could not so readily be ignored or set aside in the future.

In the consultations leading to the NSDD, the Committee and the Administration were unable to reach agreement on a requirement that the Intelligence Committees, or the group of leaders, be informed of covert actions within 48 hours of their approval by the President. The NSDD required a National Security Council planning group to reevaluate at least every 10 days a decision to delay Congressional notification of a given finding. While the rationale may have been to ensure that the delay would be kept to the absolute minimum length of time, the procedure contemplated that notice may be withheld indefinitely so long as NSC planning group members agreed.

Thus, the NSDD appeared to conflict with the current oversight statute which, in subsection 501(b) of the National Security Act, requires notification "in a timely fashion" and did not permit such indefinite delay.

E. Iran-Contra Committee

Each of these issues was fully considered at great length by the Intelligence Committees and the Iran-Contra Committee in the months leading to the introduction of S. 1721 and the approval of nearly identical Iran-Contra Committee recommendations. Much of the same ground covered in the Intelligence Committee's closed hearings in December, 1986, was covered again in the public Iran-Contra hearings and report in 1987. The witnesses discussed not only the facts of the Iran-Contra affair, but also the way covert action approval and oversight procedures were applied or, in many cases, misapplied. Accordingly, the exhaustive work of the special Iran-Contra Committee also served as a part of the legislative record of S. 1721.

And the work of the special Iran-Contra Committees was certainly significant. The staffs of the House and Senate Committees reviewed more than 300,000 documents and interviewed or examined

more than 500 witnesses. The Committees held 40 days of joint public hearings and several executive sessions. The joint report of the Committees is over 690 pages long, including the minority report and supplemental and additional views of individual members.

The following recommendations from the joint report of the Iran-Contra Committees were reflected in S. 1721:

1. FINDINGS: TIMELY NOTICE

The Committees recommend that Section 501 of the National Security Act be amended to require that Congress be notified prior to the commencement of a covert action except in certain rare instances and in no event later than 48 hours after a finding is approved. This recommendation is designed to assure timely notification to Congress of covert operations.

Congress was never notified of the Iranian arms sales, in spite of the existence of a statute requiring prior notice to Congress of all covert actions, or, in rare situations, notice "in a timely fashion." The Administration has reasoned that the risks of leaks justified delaying notice to Congress until after the covert action was over, and claims that notice after the action is over constitutes notice "in a timely fashion." This reasoning defeats the purpose of the law.

2. WRITTEN FINDINGS

The Committees recommend legislation requiring that all covert action findings be in writing and personally signed by the President. Similarly, the Committees recommended legislation that requires that the finding be signed prior to the commencement of the covert action, unless the press of time prevents it, in which case it must be signed within 48 hours of approval of the President.

The legislation should prohibit retroactive findings. The legal concept of ratification, which commonly arises in commercial law, is inconsistent with the rationale of findgs, which is to require Presidential approval before any covert action is initiated * * *

3. DISCLOSURE OF WRITTEN FINDINGS TO CONGRESS

The Committees recommended legislation requiring that copies of all signed written findings be sent to the Congressional Committees * * *

4. FINDINGS: AGENCIES COVERED

The Committees recommended that a finding by the President should be required before a covert action is commenced by any department, agency, or entity of the United States Government regardless of what source of funds is used * * *

5. FINDINGS: IDENTIFYING PARTICIPANTS

The Committees recommended legislation requiring that each finding should specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any way in a covert action and whether any third party, including any foreign country, will be used in carrying out or providing funds for the covert action. The Congress should be informed of the identities of such third parties in an appropriate fashion * * *.

7. PRESIDENTIAL REPORTING

The Committees recommend that consistent with the concepts of accountability inherent in the finding process, the obligation to report covert action findings should be placed on the President * * *.

8. FINDINGS CANNOT SUPERSEDE LAW

The Committees recommend legislation affirming what the Committees believe to be the existing law: that a finding cannot be used by the President or any member of the Executive branch to authorize an action inconsistent with, or contrary to, any statute of the United States—S. Rept. No. 100–216, pp. 423–426.

The joint report of the Iran-Contra Committees, concluded its chapter on "Covert Action in a Democratic Society" with the following principles:

(a) Covert operations are a necessary component of our Nation's foreign policy. They can supplement, not replace, diplomacy and normal instruments of foreign policy. As National Security Advisor Robert McFarlane testified, "It is clearly unwise to rely on covert action as the core of our policy." The government must be above to gain and sustain popular support for its foreign policy through open, public debate.

(b) Covert operations are compatible with democratic government if they are conducted in an accountable manner and in accordance with law. Laws mandate reporting and prior notice to Congress. Covert action findings are not a license to violate the statutes of the United States.

(C) As the Church Committee wrote more than a dozen years ago, "covert actions should be consistent with publicly defined United States foreign policy goals." But the policies themselves cannot be secret.

(d) All government operations, including covert action operations, must be funded from appropriated monies or from funds known to the appropriate committees of the Congress and subject to Congressional control. This principle is at the heart of our constitutional system of checks and balances.

(e) The intelligence agencies must deal in a spirit of good faith with the Congress. Both new and ongoing covert

action operations must be fully reported, not cloaked by broad findings. Answers that are technically true, but misleading, are unacceptable.

(f) Congress must have the will to exercise oversight of covert operations. The intelligence committees are the surrogates for the public on covert action operations. They must monitor the intelligence agencies with that responsibility in mind.

(g) The Congress also has a responsibility to ensure that sensitive information from the Executive branch remains secure when it is shared with the Congress. A need exists for greater consensus between the Legislative and Executive branches on the sharing and protection of information.

(h) The gathering, analysis, and reporting of intelligence should be done in such a way that there can be no question that the conclusions are driven by the actual facts, rather than by what a policy advocate hopes these facts will be—S. Rept. No. 100-216, p. 383-384.

F. Hearings and consultations

Pursuant to the terms of S. Res. 23, and in order to receive the final recommendations based on the extensive work of the Iran-Contra Committee, the Intelligence Committee postponed hearings on the specific proposals contained in S. 1721 until after final approval of the Iran-Contra Committee's Report in November, 1987. Thereafter, the Intelligence Committee immediately began the final phase of its work on oversight legislation. At a public hearing on November 13, 1987, the sponsors of legislation in this area, testified on their respective bills. Senator William S. Cohen testified on behalf of S. 1721. Senator Arlen Specter testified on behalf of S. 1818, which contained similar covert action finding and notice requirements and would have established a statutory Inspector General for the CIA and imposed a mandatory jail term for false statements to Congress. Senator John Glenn testified on behalf of S. 1458, which would have authorized the General Accounting Office to audit CIA programs and activities. Senator Wyche Fowler testified on behalf of S. 1852, which would establish standards for covert action.

At a closed hearing on November 20, 1987, DCI William Webster testified on the practical impact of the bills on the Intelligence Community. Director Webster identified specific concerns which the Committee subsequently took into account in revising the bill. At a public hearing on December 11, 1987, the Committee received testimony from the Vice Chairman of the Iran-Contra Committee, Senator Warren Rudman, who cosponsored S. 1721. Assistant Attorney General Charles Cooper testified at that hearing on how the Justice Department's view of constitutional law applied to the bill. Also testifying at that hearing were the authors of similar House legislation, H.R. 1013, Representative Louis Stokes, Chairman of the House Permanent Select Committee on Intelligence, and Representative Matthew F. McHugh, Chairman of the Subcommittee on Legislation.

On December 16, 1987, the Committee received testimony at a final public hearing from Secretary of Defense Frank Carlucci and Under Secretary of State Michael Armacost, who expressed the Administration's opposition to the requirement in S. 1721 to report covert action findings to appropriate members of Congress within 48 hours, and from former Secretary of Defense Clark Clifford and former Deputy Director of Central Intelligence, John McMahon, who supported this requirement. On December 17, 1987, the Committee received a letter from FBI Director William Sessions raising questions about the application of the bill to FBI foreign counterintelligence and international terrorism investigative programs.

At the same time, the Committee consulted widely with knowledgeable people, including former senior U.S. Government officials, experts in intelligence law, and Executive branch representatives. Committee staff met personally with over two dozen experts who provided valuable assistance in helping to evaluate and refine the language of S. 1721, and results of that process were made available through their staff to all members of the Committee.

Representatives of several organizations submitted written comments on the bill. The American Civil Liberties Union recommended greater restrictions on covert action and officials of the following organizations recommended fewer restrictions: the Association of Former Intelligence Officers, the Hale Foundation, the National Intelligence Study Center, and the Security and Intelligence Foundation. Individuals submitting written comments in general support of the bill included former Secretary of State Cyrus Vance, Senator Patrick Leahy, Harry Howe Ransom of Vanderbilt University, Gregory F. Treverton and Laurence H. Tribe of Harvard University, and Loch Johnson of the University of Georgia. Individuals submitting written comments in general opposition included former Senator Barry Goldwater, former DCIs Richard Helms and Stansfield Turner, Robert F. Turner, former Counsel to the President's Intelligence Oversight Board, and John Norton Moore of the University of Virginia.

Therefore, the Committee's decision to report S. 1721 in January 1988, was the culmination of a long and exhaustive process of review and analysis of the need for specific changes in the current oversight statutes. Indeed, that process extends back to the very beginning of the Committee's experience under the present law. It has taken into account not only the lessons of the Iran-Contra Affair, but also the concerns and expertise of current and former policymakers and intelligence officials who were not involved in the Iran-Contra events.

G. Actions in the 100th Congress

S. 1721 was reported by the Select Committee on Intelligence on January 27, 1988, by a vote of 13–2 (S. Report 100–276.) After floor debates on March 3 and 4, 1988, it passed the Senate on March 15, 1988, by a vote of 71–19.

A counterpart bill, H.R. 3822, was reported by the House Permanent Select Committee on Intelligence and House Foreign Affairs Committee on July 6, 1988, but was never brought to a vote in the House of Representatives.

H. Negotiations in the 101st Congress

The Committee initially deferred further consideration of an oversight bill in the 101st Congress until it was able to ascertain whether a compromise could be reached with the new Administration on the so-called "48-hour" provision of the previous bill, requiring the President to report covert actions to the intelligence committees within 48-hours of their approval.

There ensued in the first nine months of 1989 a series of negotiations between Committee and White House representatives to this end, culminating recently in a firm commitment from the President to return to the understandings that underlay the 1980 Act. With such commitment, the Committee believes the intelligence oversight improvements originally embodied in S. 1721, less an absolute statutory requirement to report covert actions to the committees within 48 hours, should be enacted.

Background of the legislation

It is important to note that, prior to the Iran-Contra affair, the Intelligence Committee had continuously analyzed the issues raised by the ambiguities in the applicable oversight statutes. In fact, consideration of these issues dates back to 1981, almost immediately after enactment in 1980 of the Intelligence Authorization Act for Fiscal Year 1981 which established the essential features of the present oversight process.

A. Intelligence Oversight Act of 1980

The 1980 legislation, which was originally reported by the Committee and passed by the Senate as the Intelligence Oversight Act of 1980, made two fundamental changes to the statutory framework for intelligence oversight. First, it modified the Hughes-Ryan Amendment of 1974 to confine notice of Presidential findings for CIA's covert action to the two intelligence committees. This reduced from eight to two the number of committees notified of covert action findings.

Second, the 1980 legislation added a new Section 501 on Congressional oversight to the National Security Act of 1947. Section 501 established comprehensive oversight procedures for all departments, agencies, and entities of the United States engaged in intelligence activities. It required that the two intelligence committees be kept fully and currently informed of all intelligence activities, including significant anticipated intelligence activities. It also provided that when the President determined it was essential to meet extraordinary circumstances affecting vial U.S. interests, prior notice could be limited to eight Members of Congress—the Chairmen and Vice Chairmen of the Intelligence Committees, the Speaker and Minority Leader of the House, and the Majority and Minority Leader of the Senate.

Moreover, Section 501 was deliberately written with some ambiguity as a means of reaching agreement with the Executive branch. As a result, for example, the requirement for prior notice of covert action, to the committees or to the group of eight, was legally conditioned by two clauses that appear at the beginning of subsection 501(a)—referred to as "preambular clauses." The gener-

al reporting requirements were imposed "to the extent consistent with due regard" for the constitutional authorities of the Executive and Legislative branches and "to the extent consistent with due regard" for the protection of classified information and intelligence sources and methods from unauthorized disclosure.

The original Hughes-Ryan amendment of 1974 placed no such conditions on its requirement for notice of CIA covert action "in a timely fashion." Therefore, in order to preserve the full force of the Hughes-Ryan notice requirement for the two Intelligence Committees the authoris of the 1980 statute added subsection 501(b) which was not qualified by the preambular clauses. This subsection said that the President must report to the Intelligence Committees "in a timely fashion" if prior notice is not given under subsection (a) and must explain the reasons for not giving prior notice.

B. Consultations on Executive Order 12333

Almost immediately after the 1980 law was enacted, the Committee began to examine its meaning and application. The first occasion to do so in 1981 was the confirmation hearing for William Casy as DCI. Mr. Casey was asked specifically about his intentions in the area where the statute left some ambiguity about notice of covert action. He replied that he intended "to comply fully with the spirit and the letter of the Intelligence Oversight Act." He also noted that there were "reservations * * * that relate to the President's constitutional authority." Mr. Casey went to add:

> I cannot conceive now of any circumstances under which they would result in my not being able to provide this committee with the information it requires. I would obviously have to be subject to and discuss with the President any particular situations which I cannot now foresee, and I would do that in a way that this committee would know about. (Nomination of William J. Casey, Hearing before the Senate Select Committee on Intelligence, January 13, 1981, p. 25.)

Early in 1981, the Administration agreed to consult the Committee on any changes that might be proposed in the Executive Order on intelligence activities. This led to formal consultation on specific oversight issues addressed in Executive Order 12333, issued by President Reagan on December 4, 1981. The previous order issued by President Carter in 1978 had contained a section on Congressional oversight similar to what became the language enacted by statute in 1980. The Reagan order deleted this section and substituted a provision requiring compliance with the 1980 statute. (Executive Order 12333, Sec. 3.1.)

As a result of Committee consultation in 1981, Executive Order 12333 added a provision not included in the previous order to fill a gap in oversight law. The Hughes-Ryan Amendment required a Presidential finding for CIA covert action, but not for covert action by other parts of the government. This gap was thought to have been closed by a new Executive Order provision stating that the finding requirement of Hughes-Ryan "shall apply to all special activities as defined in this Order." (Executive Order 12333, Sec. 3.1.) However, as events later proved, the fact that this provision was

contained in an Executive Order, but not in a statute, presented an opportunity for abuse.

The Committee was also consulted on revisions in the definition of "special activities" which permitted operations inside the U.S. in support of "national foreign policy objectives abroad" and which added language excluding operations "intended to influence United States political processes, public opinion, policies, or media." (Executive Order 12333, Sec. 3.4(h).)

The amendment adopted by the Committee draws directly on these deliberations in 1981. It would incorporate into the oversight statute the Executive Order requirement of a Presidential finding for special activities by any part of the government. And it adopts the essential features of the definition of "special activities," including the ban on operations to influence domestic U.S. policies or media.

The cooperation between the Committee and the Executive branch in developing Executive Order 12333 reflected a commitment on both sides to working out any problems with the oversight procedures by mutual accommodation. A Committee report to the Senate on September 23, 1981, included as an appendix a summary of the legislative history of modification of the Hughes-Ryan Amendment. It cited the floor statement by the sponsor of the 1980 legislation, Senator Huddleston, that "the only constitutional basis for the President to withhold prior notice of a significant intelligence activity would be exigent circumstances when time does not permit prior notice." (S. Rept. No. 97-193, pp. 31-34.)

It became clear as a result of the Iran-Contra affair, however, that the Executive branch did not agree with the intent of the sponsor of the oversight law. Instead, the Justice Department asserted the right to withhold prior notice from even the group of eight leaders on the grounds of protecting secrecy. In addition, the Department construed the "timely" notice provisions of the law to permit the President to withhold notice indefinitely.

These problems did not become apparent in the early 1980s, when the Committee was able to report that it "has received detailed reports and has heard testimony on covert action programs *before implementation,* and has actively monitored the progress of those programs once launched. Certain covert action programs have been modified to take into account views expressed by the Committee." (S. Rept. No. 98-10, p. 2.) (Emphasis added.) In this period, the Administration was able to comply fully with the prior notice provisions of the oversight statutes, and operations clearly benefited from that consultation.

C. Nicaragua harbor-mining

During 1983-84, problems with the Nicaragua covert action program led to a reassessment of covert action oversight procedures. In 1983, the Congress placed a $24 million ceiling on funds available for the Nicaragua covert action program in Fiscal Year 1984. Describing the events that led up to this action, including a Committee requirement that the Administration issue a new Presidential finding, the Committee explained the distinction between the powers of the Congress to appropriate funds and to obtain information and the power of the Executive to initiate operations:

> In this connection, it should be noted that, while the Committee may recommend whether or not to fund a particular covert action program and the Congress, pursuant to its power over appropriations, may prohibit such expenditures, the initiation of a program is within the powers of the President. The Committee is entitled by law to be informed of the President's finding authorizing such an action in advance of its implementation and to offer its counsel, but does not have the right to approve or disapprove implementation of the finding. (S. Rept. No. 98–655, p. 6.)

This analysis of the constitutional powers of the respective branches continues to be the basis for the Committee's current consideration of oversight legislation.

In early 1984, the mining of Nicaraguan harbors disrupted the oversight relationship and led to the development of formal procedures to clarify reporting obligations. On June 6, 1984, Director Casey, with the approval of the President, signed a written agreement with the Committee setting forth procedures for compliance with the statutory requirements. The Committee summarized them in a report to the Senate:

> A key component of the agreement that ultimately was achieved concerned recognition by the Executive branch that, while each new covert action operation is by definition a "significant anticipated intelligence activity," this is not the exclusive definition of that term. Thus, activities planned to be undertaken as part of ongoing covert action programs should in and of themselves be considered "significant anticipated intelligence activities" requiring prior notification to the intelligence committees if they are inherently significant because of factors such as their political sensitivity, potential for adverse consequences, effect on the scope of an on-going program, involvement of U.S. personnel, or approval within the Executive branch by the President or by higher authority than that required for routine program implementation. (S. Rept. 98–665, pp. 14–15.)

The Committee amendment builds directly upon the deliberations in 1984 by specifying in statute the requirement to report significant changes in covert actions under previously approved findings. The procedures developed in cooperation with the CIA in 1984 provide a substantial basis for the legislative history of this provision.

Subsequent experience indicated, according to the Committee's 1984 report, that "further steps were necessary to ensure that delays not inadvertently result in failure to notify the Committee prior to implementation of significant activities. The Chairman and Vice Chairman called this matter to the attention of the DCI, and he agreed to the establishment of specific time intervals for the notification process." (S. Rept. 98–665, p. 15, note 4.) This was the genesis of the concept in S. 1721 of notice within a fixed time period, such as 48 hours.

In the 99th Congress, the Committee and the DCI further refined these procedures. An addendum signed in June 1986 provided, for example, that advisories to the Committee would describe "any instance in which substantial nonroutine support for a covert action operation is to be provided by an agency or element of the U.S. Government other than the agency tasked with carrying out the operation, or by a foreign government or element thereof." (Nomination of William H. Webster, Hearings before the Senate Select Committee on Intelligence, 1987, pp. 52–54.)

The full texts of the 1984 agreement and the 1986 addendum appear in the hearings on Judge Webster's nomination as DCI in 1987. Both the original agreement and the addendum contained statements, insisted upon the Executive branch, that the agreed procedures were "subject to the possible exceptional circumstances contemplated" in the 1980 oversight statute. Thus, they had neither the status of law nor the force of an ambiguous commitment. The problems associated with this fact became manifest in the Iran-Contra affair.

Objectives of the legislation

The amendment adopted by the Committee draws on this background and the intensive deliberations surrounding the Iran-Contra inquiries in 1986–87 to achieve these principal objectives.

The first is to clarify and emphasise the general responsibilities of the President to work with the Congress, through the House and Senate Intelligence Committees, to ensure that U.S. intelligence activities are conducted in the national interest. Current law does not fully address the obligations of the President. Nor does the existing statute reflect the results of the consultations that have taken place between the Committee and the Executive branch on measures to implement the lessons learned from the Iran-Contra inquiry.

The second objective is to eliminate unnecessary ambiguities in the law. Experience under the current statutes has indicated significant areas where Congressional intent may be subject to misinterpretation by Executive branch officials, as well as gaps in the law where Congress did not adequately anticipate the need for statutory guidance. Examples are the absence of an explicit provision for written Presidential findings, and the need to specify those responsible for implementing covert actions. The aim is to clarity the intent of Congress with respect to oversight of intelligence activities so as to reduce the possibilities for misunderstanding or evasion. For purposes of clarity, a distinction is made between the detailed provisions for covert actions, which are instruments of U.S. foreign policy, and the requirements for other intelligence activities (i.e., foreign intelligence and counterintelligence collection and analysis) that are less controversial.

A third objective is to provide general statutory authority for the President to employ covert actions to implement U.S. foreign policy by covert means. Congress has not previously done so, except to the extent that the CIA was authorized by the National Security Act of 1947 "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Current law requires Presi-

dential approval and reporting to the intelligence committees, but this does not provide affirmative statutory authority to employ covert means as a supplement to overt instruments of U.S. foreign policy. Nor does it specify what types of activity are intended to be covered by the legal requirements for covert action. This has called into question the legality of some covert actions, such as arms transfers, undertaken as alternatives to overt programs with express statutory authority and limitations. Congress should expressly authorize covert action as a legitimate foreign policy instrument, subject to clearly defined approval and reporting requirements.

It is important to emphasize the extent to which the amendment maintains existing law, including the core Hughes-Ryan ban on CIA covert action without a Presidential finding and the general framework in Section 501 of the National Security Act for reporting to the intelligence committees. The amendment makes no substantive change in the current statutory requirements for keeping the intelligence committees "fully and currently informed" of intelligence activities other than covert actions, including "any significant anticipated intelligence activity" or "significant intelligence failure," except to make the President responsible for ensuring compliance, and for reporting illegal activities. The bill restates the principles in current law that approval of the intelligence committees is not a condition precedent to the initiation of any intelligence activity. The bill redefines the term "covert action" to more accurately reflect existing practice. The requirements to keep the intelligence committees "fully and currently informed" of intelligence activities, including covert actions and significant failures, and to provide information upon request remain subject to a clause recognizing the need to ensure protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods and other exceptionally sensitive matters. The bill also reaffirms the obligation of both Houses of Congress under current law to establish procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods provided to the intelligence committees.

The overall purpose of the Committee amendment is to use the lessons of recent experience to establish a more effective statutory framework for Executive-Legislative cooperation in the field of intelligence. Such legislation is not a guarantee against conflicts between the branches or abuses of power. It can, however, help minimize such conflicts and abuses by emphasizing the mutual obligations of the President and Congress and by eliminating unnecessary legal ambiguities that invite misunderstanding on both sides.

3. ELIMINATION OF RESTRICTION ON USE OF THE CIA RESERVE FOR CONTINGENCIES

The third amendment adopted by the Committee was to strike section 104 of the bill as originally reported. This section was originally agreed to, to ensure that funds appropriated for the CIA Reserve for Contingencies could not be used for covert actions which had not been notified to the intelligence committees. This limitation was believed to be necessary since, under existing law, the ap-

proval of the committees is not required for releases from this account. When considered in light of a Department of Justice interpretation of existing law concluding that the President had "virtually unfettered discretion" when to provide notice of covert actions to the two committees, this appeared to mean that the Reserve for Contingencies could provide the wherewithal for funding covert actions over long periods of time without the need to advise the intelligence committees. The Committee did not, and does not, view such action as an appropriate use of the Reserve for Contingencies. In the absence of a firm commitment to the committees from the President to provide timely notice, however, the Committee believed that a limitation on the Reserve for Contingencies was appropriate.

In recent days, the Committee has, in fact, reached agreement with the President that he is, indeed, willing to make a firm commitment to provide timely notice of covert actions to the committees, consistent with the original understanding underlying the 1980 Act and with the Executive branch practice since that time.

On the basis of this agreement, the Committee determined to strike section 104 of the original bill. If such commitment should not be maintained by future Presidents, the Committee believes this limitation should be reconsidered by the Congress.

4. TECHNICAL AMENDMENT

The fourth amendment adopted by the Committee to strike lines 7 and 8 from the bill is a technical amendment to correct an error in the bill as originally reported.

PURPOSE OF THE BILL

This bill would:

(1) Authorize appropriations for fiscal years 1990 and 1991 for (a) intelligence activities of the United States, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the United States Government;

(2) Authorize the personnel ceilings as of September 30, 1990 and September 30, 1991, respectively, for (a) the Central Intelligence Agency, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the United States Government;

(3) Authorize the Director Central Intelligence to make certain personnel ceiling adjustments when necessary to the performance of important intelligence functions;

(4) Make several legislative changes designed to enhance intelligence and counterintelligence capabilities and to promote more effective and efficient conduct of intelligence and counterintelligence;

(5) Establish by statute an independent Office of Inspector General for the Central Intelligence Agency; and

(6) Improve the Congressional oversight of U.S. intelligence activities.

OVERALL SUMMARY OF COMMITTEE ACTION

[In millions of dollars]

	Fiscal year request		Committee recommendation	
	1990	1991	1990	1991
Intelligence activities	(1)	(1)	(1)	(1)
IC Staff	24.1	24.4	25.068	24.931
CIARDS	154.9	164.6	154.900	164.600

[1] Classified.

The Classified Supplement to the Committee Report

The classified nature of U.S. intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to the Report, which describes the full scope and intent of its action. The Committee intends that the classified supplement, although not available to the public, will have the full force of a Senate Report, and the Intelligence Community will fully comply with the limitations, guidelines, directions, and recommendations contained therein.

The classified suplement to the Committee Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

Scope of Committee Review

The Committee conducted a detailed review of the Intelligence Community's budget request for Fiscal year 1990 and 1991. This review included more than 30 hours of testimony from the principal program managers for the U.S. Intelligence Community, including the Director and Deputy Director of Cental Intelligence; the Director, National Security Agency; the Director, Defense Intelligence Agency; the Director of the Federal Bureau of Investigation; and various senior intelligence officials of the Department of Defense.

In addition, the review included examination of over 3,000 pages of budget justification documents, as well as a review of written answers submitted by such officials in response to questions for the Committee record.

In addition to its annual review of the Administration's budget request, the Committee also performs on a continuing basis oversight of various intelligence activities and programs. This process frequently leads to actions with respect to the budget of the activity or program concerned which are initiated within the Committee itself.

Importance of Intelligence in a Changing World

During the last year, the world has experienced widespread and dramatic changes: the emergence of democratic reforms within the Communist Bloc, the willingness of the Soviet Union to negotiate military reductions, the upheavals and repression in China, the

withdrawal of Soviet troops from Afghanistan, the change in leadership in Iran, the end of the civil war in Angola, and the announced withdrawal of the Vietnamese from Cambodia, to suggest but a few.

Such changes underscore two points. First is the need for the United States to maintain an intelligence capability which permits it to anticipate and understand the nature and significance of such change. Second is the need within the U.S. Intelligence Community itself to be able to adjust to these developments. Such adjustments must not be confined simply to gathering information on new areas of interest, but must include adjusting one's previously-held analytical assumptions as well in terms of what such changes mean. Indeed, how well the Intelligence Community helps U.S. policymakers appreciate and respond to potentially far-reaching change around the world could, in some large measure, determine the extent to which the United States is itself able to shape such events in the interests of a safer and freer world.

The Committee has, and will continue to, evaluate the performance of the Intelligence Community in this regard during the forthcoming fiscal year.

Assistant Secretary of Defense for Intelligence

In the FY 1989 Intelligence Authorization Act, Congress permitted the Secretary of Defense, if he chose to do so, to use one of the existing satutory allocations for the creation of a new Assistant Secretary of Defense for Intelligence. Citing the strong preference of both congressional intelligence committees for the establishment of this position, the conference report required the Secretary of Defense to report his decision to the two committees by March 1, 1989.

Secretary Richard Cheney reported to the Committee in a letter dated May 31, 1989, that he had decided not to utilize the statutory authorization at this time, but rather to create a position on his staff of Assistant to the Secretary of Defense for Intelligence Policy. This official would be charged with the review and coordination of all parts of DOD's intelligence and counterintelligence programs.

The Committee respects the Secretary's decision although it woud have preferred the creation of a new Assistant Secretary. Indeed, it is unclear to the Committee how the new Assistant to the Secretary will be able to coordinate and control programs which are under the ostensible control of higher-ranking officials on the Secretary's staff. Nonetheless, the Committee is willing to wait and see whether this arrangement proves workable. If it does not, the Committee will reconsider a legislative solution.

Counterintelligence and Security

The Committee continued during the last year to track closely developments in the counterintelligence and security area, focusing heavily upon actions being taken to improve the security of U.S. diplomatic establishments abroad. In general, while we found that much had been accomplished since 1985–86, the "year of the spy", we found much was left to do.

We also found that the incidence of espionage, despite these efforts, had not abated, either in terms of their number or their seriousness. Since its 1986 report on "Meeting the Espionage Challenge", the Committee has catalogued numerous cases of espionage and attempted espionage, some of which had devastating consequences for the United States. We also found that many of the actions set in motion in early years were faltering as a result of diminishing resources and a lack of continuing resolve to deal with them effectively.

To provide greater public awareness of this threat and the effectiveness of the actions being taken by the Government to cope with it, the Committee intends to issue later this year a sequel to its 1986 report.

SECURITY EVALUATION OFFICE

The Committee specifically authorizes $4.5 million for the Security Evaluation Office (SEO) which is directly responsible to the Director of Central Intelligence and provides support to the Secretary of State in protecting United States diplomatic missions abroad from foreign intelligence threats. The Committee believes a cooperative effort between the State Department and the U.S. Intelligence Community is essential to respond to the grave deficiencies in embassy security that have come to light in recent years.

Those deficiencies have not been rectified, and the State Department has been derelict in failing to implement actions that are indispensable for the protection of U.S. diplomatic facilities. Our nation faces well-organized and sophisticated intelligence adversaries who have proven their ability to defeat the Department's inadequate defenses. Improvements appeared possible last year, including reconstruction of the new Moscow Embassy building and closer cooperation between the State Department and the Intelligence Community, but progress has virtually come to a halt. In the case of the new Moscow Embassy, the prospects are for reversal of the decision by Secretary Shultz and President Reagan to reconstruct the entire building. Reversing that decision would invite another security disaster and confirm signs that the Executive branch is incapable of effective action in this field. The President and the NSC, as well as the Secretary of State and the DCI, would share responsibility for such an unfortunate outcome.

In 1987, the Committee issued a report on "Security at the United States Missions in Moscow and Other Areas of High Risk." The Committee concluded that the State Department lacked "a systematic, stringent security program to detect and prevent Soviet technical penetration efforts" and that there were "basic flaws in State Department security organization and practices." The history of the new Moscow building was "a text book example of bureaucratic inertia, turf warfare, and inadequate coordination."

To address these problems, the Committee made a series of recommendations, including demolition and reconstruction of the new Moscow building and increased involvement of the U.S. Intelligence Community in the protection of embassy security against the foreign intelligence threat. The DCI was requested to certify the security conditions of Embassy facilities; and the Committee proposed

that the Secretary of State and the DCI convene an expert panel to review "the plans, contracts, and protocols" for new Embassy projects in Moscow and Eastern Europe and made recommendations "to protect the integrity of all new Embassy projects."

Studies commissioned by the Executive branch reached similar conclusions. The Inman Panel in 1985 highlighted the systematic weaknesses brought to light by Soviet bugging of Moscow Embassy typewriters. In 1987, Secretary Schlesinger documented the flaws in the process of constructing the new Moscow building, and Secretary Laird's panel identified security weaknesses that contributed to the KGB's ability to recruit Sergeant Lonetree and made the Moscow Embassy highly vulnerable to other compromises. The President's Foreign Intelligence Advisory Board made further recommendations.

Upon the completion of these studies in mid-1987, the Administration developed specific measures to improve embassy security against the intelligence threat. None of those measures has yet been implemented. They included the dismantlement and reconstruction of the new Moscow building, Undersecretary-level status for the Director of Diplomatic Security in the State Department, and establishment of an organization under the DCI to bring together security experts from the Intelligence Community and the State Department.

In 1988, the DCI established the Security Evaluation Office to implement the latter measure, but it has failed to achieve its objectives. The State Department has not cooperated with the new Office, either by assigning necessary personnel or by integrating SEO's work into the embassy security process. While the State Department Inspector General has expanded its security inspections with interagency involvement, the Department remains unwilling to support SEO. The Intelligence Community, for its part, also bears a share of responsibility for SEO's present ineffectiveness, having been unwilling to recognize and meet legitimate State Department concerns on certain matters. This bureaucratic infighting has not been helpful in resolving the difficult problems which plague the security of U.S. diplomatic establishments.

The Committee believes close cooperation between the State Department and the Intelligence Community is essential in developing and implementing measures to protect U.S. Embassies from the intelligence threat. In the case of the new Moscow Embassy building, for example, the Intelligence Community should be a full participant in all significant policy decisions, not just the decisions affecting the Intelligence Community's own interests. SEO should provide a systematic means to bring to bear on embassy security problems the Intelligence Community's unique capabilities for evaluation of threats, vulnerabilities, and countermeasures.

To ensure that the intent of Congress is clearly understood, the Committee has decided to fund the Security Evaluation Office in the unclassified budget for the Intelligence Community Staff. The $9 million request for SEO has been reduced to $4.5 million because of the lack of cooperation demonstrated by both State Department and the Intelligence Community, but this is not intended to indicate any lack of Congressional support for an organization such as SEO within the Intelligence Community. The Committee is

prepared to reconsider this reduction if agreement is reached on cooperation between the State Department and the Intelligence Community through SEO. In this regard, the Committee urges the Intelligence Community to do everything possible to respond to State Department needs.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

TITLE I—INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence activities the Act authorizes appropriations for Fiscal Years 1990 and 1991.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence activities and personnel ceilings covered under this title for Fiscal Years 1990 and 1991 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence in Fiscla Years 1990 and 1991 to expand the personnel ceilings applicable to the components of the Intelligence Community under Sections 102 and 202 by an amount not to exceed two percent of the total of the ceilings applicable under these sections. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two intelligence committees of the Congress.

TITLE II—INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes appropriations in the amount of $25,068,000 for the staffing and administration of the Intelligence Community Staff for Fiscal Year 1990 and $24,931,000 for Fiscal Year 1991.

Section 202 provides details concerning the number and composition of Intelligence Community Staff personnel.

Subsection (a) authorizes full-time personnel for the Intelligence Community Staff for Fiscal Years 1990 and 1991, and provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and to pay the personnel of the Intelligence Community Staff. This language reaffirms the statutory authority of the Director of Central Intelligence and clarifies the legal status of the Intelligence Community Staff. In the case of detailed personnel, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the In-

telligence Community Staff and not from federal employment or military service.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 302 authorizes Fiscal Year 1990 appropriations in the amount of $154,900,000 for the Central Intelligence Agency Retirement and Disability Fund for Fiscal Year 1990 and the amount of $164,000,000 for Fiscal Year 1991, including $4.5 million for the Security Evaluation Office.

TITLE IV—CENTRAL INTELLIGENCE AGENCY ADMINISTRATIVE PROVISIONS

Section 401 requires a participant in CIARDS to complete within the last two years before retirement one year of qualifying service before becoming eligible for an annuity.

Current Civil Service Retirement System (CSRS) legislation requires that an individual spend one out of their last two years prior to retirement in an active pay status. The CIA Retirement Act (CIARDS) has no similar provision, thus an individual can be in a "When Actually Employed" status of "Leave Without Pay" status for an extended period of time and retain eligibility to retire. This legislation will resolve this anomaly and put CIARDS in conformance with CSRS. An Executive Order to conform CIARDS and CSRS would not be appropriate in this instance since the CSRS provision in question has been in existence since 1956 and conforming Executive Orders are authorized only with respect to legislation since 1975.

Section 402 clarifies language in the Intelligence Authorization Act of 1988 concerning death in service benefits. Under this legislation, a qualified former spouse is eligible for a pro-rata death in service benefit. In legislation passed in Fiscal Year 1987 this same spouse, if divorced prior to November 15, 1982, is also entitled to receive the maximum (55 percent) survivor annuity. Neither piece of legislation addressed dual entitlements. Both acts, read together, would allow a qualified former spouse who is under the age of 50 to receive a pro-rata share survivor benefit and upon reaching age 50 to receive a maximum survivor benefit (55 percent). In order to preclude paying dual entitlements, Section 403 provides that the maximum survivor benefit authorized under Public Law 99–569 supersede death in service benefits which are authorized in Public Law 100–178 once the former spouse reaches age 50. The amendment is made retroactive to November 15, 1982, which is the effective date of section 402(a) of the Fiscal Year 1988 Intelligence Authorization Act.

Section 403 of the bill amends the Central Intelligence Agency Act of 1949 to provide Agency employees in the Civil Service Retirement System and FERS performing qualifying service with the same disability and death in service benefits as those received by employees who qualify for CIARDS and the FERS-Special Category. The reason for this amendment is to provide Agency employees described above with the same level of benefits as those received by

State Department employees in the Foreign Service Pension System or Foreign Service Retirement and Disability System.

The Foreign Service Pension System and Foreign Service Retirement and Disability System (FSRDS), unlike CIARDS and FERS-Special, do not have a minimum time required to qualify to enter the System. Individuals in the Foreign Service Pension System or FSRDS serving overseas are covered by the enhanced disability and death in service benefits under those Systems while Agency employees serving overseas under the Civil Service Retirement System or FERS do not have these same benefits available to them because they have not completed five years of qualifying service. Section 403 is designed to remedy this inequality in treatment between CIA and Foreign Service employees.

Proposed Section 18(a) and (c) of the CIA Act provide disability benefits to those Agency employees performing qualifying service who are in the Civil Service Retirement System or FERS that are equivalent to CIARDS and FERS-Special disability benefits. Qualifying service in most instances will be service overseas.

To qualify under Section 18(a), an Agency employee must have at least five (5) years of creditable service, not be designated into CIARDS, become disabled while performing qualifying service and be disabled in accordance with the criteria set forth in the Civil Service Retirement System. To qualify under Section 18(c) of the bill, an individual must have completed 18 months of service, not be designed into FERS-Special, be disabled while performing qualifying service, and satisfy the criteria for disability under FERS.

The impact of adopting Section 18(a) of the bill on the Agency population can be illustrated by comparing the differences in disability annuities under the Civil Service Retirement System and CIARDS. Under the Civil Service Retirement System and CIARDS, an individual is entitled to 40 percent of the average of the highest three years of his salary if disabled. There is, however, an alternative method for calculating a disability annuity. This alternative method is based on the number of years of service multiplied by the average of the employee's highest three years of salary in determining the disability annuity. If the alternative method for calculating a disability annuity exceeds 40 percent of the average of the highest three years of salary, the alternative method will be used to calculate the annuity. The alternative method for calculating a disability annuity would be computed under the Civil Service System at 1.5 percent accrual rate for the first five years of service, 1.75 percent accrual rate for the next five years of service, and 2 percent accrual rate for service after ten years. Under CIARDS, the alternative method for calculating a disability annuity would be computed at 2 percent accrual rate for the entire term of Agency service.

Under Section 18(a), the disability annuity would be calculated at 40 percent of the average three highest years of salary, or the alternative method based on a 2 percent accrual rate, whichever is greater. In most instances, the disability annuity calculated by using 40 percent of the average highest three years of salary would be greater than alternative method for calculating disability benefits since an individual would have to serve 20 years in order for the alternative method to exceed 40 percent of his highest three

years of salary. Thus, Section 18(a) will only affect a very small group of CIA employees in the CSRS who have more than 20 years of government service and who are disabled while serving overseas or who otherwise are performing qualifying service at the time of the disability.

The impact of Section 18(c) could be somewhat more pronounced. Under FERS, disability benefits are calculated at 60 percent of the average of the highest three years of salary for the first year of disability. For the following years of disability, benefits are calculated at 40 percent of the average of the highest three years of salary. There is also an alternative method of calculating a disability annuity based on the number of years of government service multiplied by the accrual rate. This figure is then multiplied by the average of the highest three years of salary. The alternative method can be used before age 62 if the amount a person would receive in disability benefits using this method exceeds the amount that an individual would receive in disability benefits by multiplying the average of the highest three years salary by 40 percent. The accrual rate under the alternative method would be 1 percent for individuals in FERS and 1.7 percent for individuals in FERS-Special. When an individual reaches age 62, his benefits are re-computed as if the person worked to age 62. Thus an individual disabled at age 50 with 20 years of government service would have his disability benefits recalculated as if he served 32 years in government upon reaching age 62. The law requires that upon reaching age 62, the disability annuity be recalculated by multiplying the accrual rate by the actual and projected years of government service. Thus the disabled employee described above would have his disability reduced from 40 percent of the average of the highest three years of salary to 32 percent of the average highest three years of salary.

Under Section 18(c), an individual in the FERS who is disabled overseas would have the alternative annuity calculated by using the 1.7 percent accrual rate. The higher accrual rate will increase an employee's disability pay when he reaches age 62. In the example described above, the Agency employee described above who reaches age 62 will have his annuity recomputed so that it equals 46 percent of pay rather than reduced to 32 percent. CIA estimates that approximately one person per year not in CIARDS or FERS-Special will be disabled while performing qualifying service and may take advantage of the additional benefits provided by Sections 501(a) and (c).

Sections 18(b) and (d) provide CIARDS and FERS-Special Category death in service benefits to qualifying survivors of those Agency employees in CSRS or FERS who are killed while performing qualifying service. Under CSRS and CIARDS, a survivor benefit equal to 55 percent of the annuity would be paid, and for FERS and FERS-Special, a survivor benefit of 50 percent of the annuity would be paid.

To qualify for a survivor benefit under Section 18(b), an individual must have served 18 months of creditable service, not be designated CIARDS, died during a period of qualifying service, and been survived by a widow or widower, former spouse, and/or child or children. Similar requirements are contained in Section 18(d).

Under CIARDS and CSRS, an individual's survivor annuity is calculated at 40 percent of the average of the deceased employees highest three years of salary. The alternative method for calculating the annuity is to multiply the accrual rate by the number of years of government service. If the alternative method for calculating the survivor annuity exceeds 40 percent of the average of the highest three years of salary, the alternative method will be used to calculate the annuity. The accrual rates for CIARDS and CSRS are as stated above. Once the annuity is calcuated, a survivor would be entitled to 55 percent of that annuity.

Under Section 18(b), the accrual rate for calculating a survivor benefit under the CSRS would be raised to 2 percent. This would make it more likely for an individual to use the alternative method for calculating a survivor annuity. In most instances, however, the survivor annuity calculated by using 40 percent of the average highest three years of salary would be greater than the alternative method for calculating a survivor annuity since an individual would have to serve 20 years in order for the alternative method to exceed 40 percent of his highest three years of salary.

Under FERS and FERS-Special, the only method used to calculate a survivor annuity is to multiply the number of three years of government service by the accrual rate. The accrual rate is 1 percent for FERS and 1.7 percent for FERS-Special for the first 20 years of creditable service.

Under Section 18(d), the accrual rate for calculating a survivor annuity for Agency employees in FERS, who meet the requirement contained in Section 18(d), would be raised from 1 percent to 1.7 percent. This would result in a higher survivor benefit being paid to the survivor of the FERS Agency employee. It is estimated that on an annual basis approximately two CIA employees in FERS will die while serving overseas and take advantage of the additional benefits provided pursuant to section 501(d).

Proposed Section 18(e) of the CIA Act establishes that the additional annuities paid as a result of this Section will be funded from the Civil Service Retirement and Disability Retirement Fund. This subsection also establishes that these annuities are paid under chapters 83 and 84 of title 5 United States Code, rather than under the CIA Act.

This section is effective on the date of enactment, and applies to Agency employees who retire on disability or die in service on or after such date.

TITLE V—DOD PERSONNEL AUTHORITIES IMPROVEMENTS

Section 501 authorizes the Secretary to accept and use gifts made to further the educational activities of the Defense Intelligence College. The Defense Intelligence College currently cannot take advantage of modest educational support opportunities presented by the private academic and corporate communities. This authority shall be exercised with close legal supervision to ensure that no standards of conduct issues would arise.

Section 502 amends provisions of 10 U.S.C. 1604(e)(1) to extend permanently the authority of the Secretary of Defense to terminate DIA civilian personnel of the Defense Intelligence Agency. This

proposal augments the ability of DOD personnel systems to address the unique difficulties attendant to managing personnel problems in a classified environment, and is in keeping with the findings and recommendations of the National Academy of Public Administration (NAPA) study.

Section 503 modifies subsection (c) to Section 1430 of title 8 to allow members of the U.S. Army Russian Institute (USARI) staff who have defected or emigrated to the West to obtain U.S. citizenship while working at the school in Garmisch, Federal Republic of Germany. Section 1430 already allows several exceptions to the normal requirement of prior residence or physical presence within the United States for U.S. citizenship. The new subsection will allow members of the USARI staff to remain at the school to perform their teaching duties while at the same time accruing time toward U.S. citizenship. At the present time, a majority of the staff at USARI are stateless. Because of the location of the school, employees are unable to fulfill the residency requirement for U.S. citizenship. As defectors and emigres, the employees are guaranteed by U.S. citizenship. Their unique situation, their dedication, and their invaluable contribution to the United States Government justify an exception to the statutory requirement. This section would also provide an incentive to qualified defectors and emigres to consider USARI as an employment alternative without forfeiting their right to apply for U.S. citizenship.

Section 504 amends paragraph 1590(e)(1) of Chapter 81 of title 10, United States Code, which was enacted as Section 504 of the Fiscal Year 1987 Intelligence Authorization Act, by deleting the phrase, "during Fiscal Years 1988 and 1989,". The operative effect of the deletion is to grant the Secretary of Defense permanent special termination authority with regard to any civilian intelligence officer or employee of a military department under the circumstances detailed in paragraph 1590(e)(1). Deletion of the phrase, "during Fiscal Years 1988 and 1989," in paragraph 1590(e)(1) parallels Section 502 of this bill. Parity alone between DIA and the Military Services in managing their civilian intelligence personnel population dictates adoption of this proposal. It is hoped that the Secretary of Defense will never have to make use of this special termination authority; such authority should be invoked only as a last resort. It is important that this authority be available, however, should an instance arise which necessitates such action.

Section 505 extends for one year the authority of the Secretary of Defense to pay a death gratuity to the survivors of any member of the armed forces on active duty assignment to a Defense Attache Office outside the United States who died as a result of hostile or terrorist action. The death gratuity would be the same as that authorized by section 1489(b) of Title 10, United States Code, payable to members of the armed forces and civilian employees of the Department of Defense who died from hostile or terrorist action while they were assigned to an intelligence component of the Department of Defense under cover or otherwise engaged in clandestine intelligence activities.

Congress first enacted this provision as section 704 of the Intelligence Authorization Act for Fiscal Year 1989. Subsection (c) of section 704 required the Secretary of Defense to submit a report to the

Congress by March 1, 1989, setting forth the position of the Department of Defense with respect to making this provision permanent.

In response to this requirement, the Department of Defense provided the Committee with an interim report asking for additional time for the Department to formulate its position on this matter.

On the basis of this request, the Committee agreed to extend the authority for one additional year, and reimpose the requirement upon the Secretary of Defense for a report with respect to making this provision permanent.

TITLE IV—FBI ENHANCED COUNTERINTELLIGENCE AUTHORITIES

Section 601 modifies subsection 601(a)(2) of the Intelligence Authorization Act for Fiscal Year 1989 by eliminating the requirement that only FBI employees in the New York Field Division who were "subject by policy and practice to directed geographical transfer or reassignment" could be eligible for periodic payments as part of the five-year demonstration project authorized by this provision. The original purpose of this language had been to limit the scope of participation in the demonstration project.

The FBI has advised, however, that this limitation has had a significant adverse impact upon the morale, retention and recruitment of FBI employees in the New York Field Division who were not subject to "geographical transfer or reassignment." Indeed, the Committee has received numerous complaints directly from the employees concerned with respect to this limitation. The great majority of these employees have full or part-time responsibilities to support FBI foreign counterintelligence activities.

In the interests of fairness and in improving the morale and retention rates among the affected FBI employees, the Committee believes that an adjustment to the demonstration project should be authorized to permit the inclusion of all FBI employees at the New York Field Division within the scope of this demonstration project.

The Committee also wishes to clarify its intent that the maximum lump-sum payment under subsection (a)(1) of section 601 be limited to $20,000 per employee or employee household. Thus, married employees of the New York Field Division, living in the same household, would be limited to a maximum payment of $20,000 under the demonstration project.

The Committee continues to be concerned with the FBI's problems in recruiting and retaining personnel with specialized skills, especially needed for the FBI Foreign Counterintelligence Program. In a recent study of personnel management practices within the Intelligence Community submitted by the National Academy of Public Administration (NAPA), it was recommended, in fact, that the FBI as a whole be exempted, as certain other agencies in the U.S. Intelligence Community have been, from the personnel management regulations of the Office of Personnel Management. The rationale for such exemption would be to permit the FBI to establish its own system for personnel management that would make more cost-effective use of its limited personnel. The FBI faces growing burdens on the work force, including an increasing foreign intelligence presence in the United States.

The Committee believes this recommendation deserves serious consideration. Therefore, the Committee requests the Attorney General and the Director of Central Intelligence to submit, by March 1, 1990, a report to the Committees on Judiciary of the House of Representatives and the Senate, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, concerning the desirability and consequences for national security of exempting the FBI from the personnel management regulations of the Office of Personnel Management, as recommended by the NAPA study. The Committee directs the FBI to provide such information and analysis as is necessary for this report.

In a related vein, the Committee is interested in learning whether and to what degree there may be functions of the FBI which could be contracted to the private sector. The Department of Justice, through negotiations with the Office of Management and Budget and the Federal Bureau of Investigation, has projected a savings of 1,956 work years for Fiscal Year 1989–1994 in the FBI by a shift of functions to the private sector for provision by contract under Circular A–76. Because of the unique sensitivity of FBI responsibilities, the Committee requests the Attorney General to provide to the Judiciary and Intelligence Committees, by December 31, 1989, a report outlining those functions of the FBI that the Department defines as commercial in nature which could be performed by private industry.

Section 602 is a "sense of the Congress" provision which addresses possible future increases in the ceiling on permanent positions at the United States Mission in the Soviet Union and at the Soviet Mission in the United States.

As communications and contacts increase between the two countries, and more citizens of each country visit or immigrate to the other, the demands upon the missions of each country increase, which can be expected to prompt demands of increases in the ceiling agreed to by the two countries on permanent staff positions.

In view of the counterintelligence concerns which attend such increases, the Committee believes it essential that such increases receive broad, high-level consideration within the Executive branch. Subsection (a) therefore provides that resolution of such issue should be accomplished by the National Security Council based upon a determination that such increases are essential to the functioning of the U.S. Mission in the Soviet Union.

Further, subsection (b) provides that no such increases be approved without a concomitant commitment to provide additional resources to the FBI sufficient to cope with the increases in permanent staff positions. There must be a realization that increases in permanent positions at the Soviet Mission to the United States inevitably impact upon the responsibilities of the FBI. Without providing the FBI with additional resources to carry out such responsibilities, U.S. security is put at further risk.

The Committee requests that determinations and action under this provision be reported to the Congress in the annual reports to the Intelligence Committees required by Section 601(b) of the Intelligence Authorization Act for FY 1985.

Section 603 provides that the FBI shall be responsible for the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad who are themselves subject to U.S. law. This would include the employees of government contractors within the United States who are accredited to such missions. The FBI has jurisdiction to conduct such investigations of espionage under Title 18, United States Code, subject to the authority of the Attorney General. Section 603 is intended to ensure that the FBI exercises that jurisdiction in all such cases concerning personnel at U.S. diplomatic missions abroad, regardless of the concurrent jurisdiction that other agencies may have.

For example, the FBI shares jurisdiction over espionage cases with the military services which have concurrent authority to investigate violations of the Uniform Code of Military Justice (Title 10, United States Code, Chapter 47). Interagency agreements allow the military services to conduct such investigations of persons under their jurisdiction. The Committee believes these arrangements are inappropriate for cases that arise at United States diplomatic missions abroad and that the FBI should be responsible for the investigation of all cases of espionage involving military personnel at such civilian installations.

Other departments and agencies also have concurrent authority to conduct security investigations of their own personnel and contractors who may be located at overseas posts. While it is not the intent of the Committee that the FBI take over responsibility for this type of investigation, it is the Committee's intent that, if such investigations should develop information indicating possible espionage involving foreign interests, the matter be referred to the FBI.

Section 603 provides that all departments and agencies shall report immediately to the FBI any information indicating a violation of the espionage laws of the United States by persons employed by or assigned to U.S. diplomatic missions. This requires reporting to the FBI the facts or circumstances which indicate a violation. For example, if this provision had been in effect in the Marine Security Guard espionage cases, initial indications of espionage would have been reported promptly to the FBI, rather than just to the State Department or the Navy or other agencies without criminal investigative jurisdiction (e.g., CIA). The State Department would have immediately advised the FBI of the report from the Regional Security Officer at the Moscow Embassy of the conduct and statements indicating possible espionage, and the CIA would have immediately advised the FBI of the report from U.S. embassy officials in Vienna of the statements indicating espionage.

The FBI should provide guidance to the relevant departments and agencies with regard to the types of facts or circumstances which should be reported as indicating espionage violations.

Finally, Section 603 states that other departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations. Thus, the State Department, the military services, the CIA and other U.S. intelligence agencies are expected to provide personnel and other resources to assist the FBI in such investigations, consistent with their respective authorities and responsibilities. For example, in a case involving U.S. military per-

sonnel subject to the Uniform Code of Military Justice, it would be appropriate for the FBI to form a team that includes investigators from the relevant military service who are familiar with military legal procedures. In addition, CIA assistance to such FBI investigations abroad would be appropriate to the extent consistent with the statutory restrictions on CIA law enforcement powers.

The Committee intends that all investigative activity under this provision shall be directed by the FBI subject to the authority of the Attorney General and any guidelines or policies that the Attorney General may establish for such investigations, in consultation with the relevant departments and agencies, and with due regard for the CIA's responsibility under Executive Order 12333 to coordinate counterintelligence activities abroad and the DCI's responsibility under the National Security Act of 1947 to protect intelligence sources and methods from unauthorized disclosure.

This provision is intended solely to regulate interagency relationships, and shall not be construed to establish a defense in any matter based upon actions taken by the Department of Defense or any other department or agency with authority to investigate and dispose of allegations of espionage.

TITLE VII—GENERAL PROVISIONS

Section 701 authorizes the increase of appropriations authorized by the Act for salary, pay, retirement and other benefits for federal employees as necessary for increase in such benefits authorized by law.

TITLE VIII—INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY

Title VIII of the bill amends the Central Intelligence Agency Act of 1949 which provides for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, by deleting section 17, and replacing it with a new subsection.

Subsection (a) sets forth the purpose of the bill and provides for the establishment of an Office of Inspector General within the Central Intelligence Agency.

In creating by statute an office of inspector general for the Central Intelligence Agency, the bill endeavors to improve the ofice's status within the Agency; to enhance its autonomy and capabilities thereby improving the objectivity and effectiveness of its performance; and to improve congressional oversight of the CIA's activities, operations and conduct.

The statutory establishment of an Office of Inspector General is also intended to bring the Central Intelligence Agency more closely into line with the rest of the Federal government. In 1978 the Congress passed the Inspector General Act to create permanent and independent offices of inspector general (OIG) to be widely located in Federal establishments and entities, including all cabinet departments and major executive agencies. The purposes set forth in subsection (a), in fact, closely parallel the purposes of the 1978 Act. Time and experience have demonstrated the success of the law

through greater effectiveness and objectively of the offices of inspector general.

Subsection (b) provides for the appointment, supervision, and removal of an Inspector General at CIA.

Subsection (b)(1) states that an Inspector General at CIA will be appointed by the President subject to confirmation by the Senate. While the qualifications of the appointment are general, the intent is that only a professionally qualified individual of unquestioned integrity should be nominated and appointed to this position. Political affiliation should not be a factor in the appointment.

Subsection (b)(1) also provides that the appointee meet the same security standards established by the DCI for CIA employees. It is the intent of this provision that the prospective appointee be found to comply with these requirements prior to this nomination being sent to the Senate. Moreover, the results of these inquiries should be forwarded to the White House by the DCI with any comments he may deem appropriate for final disposition.

The complexity of CIA's intelligence activities also necessitates that the nominee have had prior experience in the field. This might be experience at the Central Intelligence Agency or at another agency within the Intelligence Community. The bill also provides that such appointment be made on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, or public administration. While the bill leaves the nature and extent of such experience to the judgment of the President, the Committee is of the firm view that an Inspector General at CIA can only succeed if he or she has had prior knowledge or experience at senior levels of agencies or offices involved in intelligence activities. The Inspector General is not a position where persons without previous experience in the Intelligence Community can be immediately effective.

Subsection (b)(2) provides that the Inspector General shall report only to the Director of Central Intelligence and be under his general supervision. This differs from the relationship of other statutory inspectors general who may report to the agency head or the official next in rank. The Committee also believes that such relationship is appropriate in view of the Director's unique authorities and obligations to the congressional oversight committees. It is anticipated that in the Director's absence, the Inspector General would report to the Acting Director of Central Intelligence.

In exercising general supervision of the CIA Inspector General, the DCI is expected to facilitate and support the performance of his functions. The Office of Inspector General at the CIA, on the other hand, should comply with the policies of the DCI which are not in conflict with the provisions of this section.

Subsection (b)(3) provides that the DCI may prohibit the Inspector General from "initiating, carrying out, or completing any audit, inspection, or investigation if he determines that such prohibition is necessary to protect vital national security interests of the United States." This authority is similar to authority provided the Secretary of Defense, Attorney General, and Secretary of the Treasury under the Inspector General Act of 1978.

The Committee recognizes that there may be situations where an inspection, investigation, or audit by the Inspector General could

disrupt ongoing intelligence operations and hamper their success. Indeed, simply the introduction of Inspector General staff into certain locations overseas could jeopardize the security of a particular operation. There might be other cases where an investigation into previous operations could risk the disclosure of information which remains extraordinarily sensitive. In such circumstances, we believe the DCI must be in a position to terminate or defer, at least until the sensitivity of the matter of concern has diminished, any such inspection, investigation, or audit relating to such activities. Such operations may involve human sources or technical collection, counterintelligence or covert action. Further, by use of the wording "may prohibit", the Committees expect each such case to be evaluated by the DCI and his senior managers based upon the circumstances involved. It is not meant to permit the DCI to establish categories which are per se outside the purview of the CIA Inspector General.

Subsection (b)(4) provides that if the Director exercises his authority to terminate any investigation audit, or inspection under subsection (b)(3), he shall submit an appropriately classified statement of the reasons for the exercise of the power within seven days to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence. Under the Inspector General Act of 1978, the Inspector General is made reponsible for making such report to the appropriate congressional committees, with the agency head being required to comment upon the report in thirty days. The Committee believed that in the case of CIA, the responsibility to initiate a report to the intelligence committees should rest with the DCI and that the report should be made within seven days, rather than thirty. Subsection (b)(4) also provides, however, that a copy of the DCI's report shall be given to the Inspector General consistent with the protection of intelligence sources and methods, and that the Inspector General may submit such comments as he may deem appropriate to the intelligence committees. The Committee recognizes there may be circumstances that are so sensitive that the DCI may not wish to disclose them fully to the Inspector General, but rather may prefer to advise him in more generic terms. The Inspector General, for his part, may question the DCI's rationale. This provision is intended to give the Inspector General an opportunity to raise such concerns with the intelligence committees.

Subsection (b)(5) requires the DCI to report to the Attorney General, in accordance with 28 U.S.C. 535, all information, allegations, or complaints received from the Inspector General relating to federal criminal violations. These reports will be made in accordance with the guidelines approved by the Attorney General for the submission of such reports. A copy of such report will be provided to the Inspector General.

Under the Inspector General Act of 1978, the Inspector General is required to make direct reports of suspected criminal violations to the Attorney General. In the case of CIA, the Committee believed that in the interest of protecting intelligence sources and methods, this obligation should rest, as it does under current law, with the DCI. By requiring that a copy of such reports be furnished

the Inspector General, it will serve as check to ensure such reports are, in fact, submitted.

Subsection (b)(6) provides that the CIA Inspector General may be removed from office only by the President. While the bill does not set forth what should be appropriate grounds for removal, it requires the President to immediately communicate in writing to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence the reasons for any such removal.

Consistent with the President's authority to remove other officials including other statutory inspectors general, the Committee recognizes the authority of the President to remove the CIA's Inspector General. The legislation is silent on the normal term of service of the inspector general, however the Committee's intent is that the incumbent will normally transcend changes in the Presidency and the Director of Central Intelligence.

Subsection (c) sets forth the general duties and responsibilities of the CIA Inspector General.

Subsection (c)(1) gives the Inspector General the responsibility to provide policy direction for and to conduct, supervise, and coordinate independently, the inspections, investigations and audits relating to the programs and operations of the Central Intelligence Agency to assure they are conducted efficiently and in accordance with applicable law and regulations.

Subsection (c)(2) also charges the Inspector General with keeping the Director fully and currently informed concerning violations of laws and regulations, fraud and other serious problems, abuses and deficiencies, and to report the progress made in implementing corrective action.

Both of the general duties set forth in subsections (c) (1) and (2) are similar to those given inspectors general at other agencies pursuant to the Inspector General Act of 1978.

Subsection (c)(3) requires the CIA Inspector General to take due regard for the protection of intelligence sources and methods in the preparation and disclosure of his reports. Under this section, the Inspector General is being given broad access to CIA records and personnel, without regard to their sensitivity. The Committee expects a greater degree of diligence in protecting such information than is required of other CIA employees. It is essential that the Inspector General and his staff be mindful of unnecessarily exposing sensitive operational details in the preparation of reports, and that appropriate safeguards are also put in place to limit access to such reports to persons who have an official need to carry out their authorized responsibilities. The Committee does not intend this provision to be read to affect in any way its access to information in the possession of the CIA pursuant to section 501 of the National Security Act of 1947.

Subsection (c)(4) requires that the CIA Inspector General comply with generally accepted government auditing standards.

Subsection (d) specifies three types of reports involving the activities of the Inspector General which shall be made to the intelligence committees.

Subsection (d)(1) provides that the Inspector General shall prepare and submit to the DCI semiannual reports summarizing the activities of his office. The DCI is required to transmit such reports

to the intelligence committees within thirty days together with any comments he may deem appropriate. This subsection further specifies the information which must be provided in such report:

Descriptions of significant problems uncovered and recommended corrective actions;

An identification of previous significant recommendations which had not been implemented;

A certification that the Inspector General had had full and direct access to information;

A description of all cases occurring during the reporting period where the lack of subpoena power prevented the Inspector General from obtaining documents relevant to his investigative activities; and

Such legislative recommendations as he may wish to make regarding CIA programs and operations, as well as his own authorities to detect fraud and abuse.

Nothing in the language describing the statutory minimum reporting requirements required by this provision shall preclude the Inspector General from providing any other information he believes is necessary to keep the committees informed with respect to his activities. In this regard, the Inspector General and DCI should carefully review the provisions of the 1978 Act regarding IG and management reports and adapt as many provisions as is appropriate for the reports concerning the CIA.

Subsection (d)(2) requires the Inspector General to make additional reports to the DCI when he becomes aware of particularly serious or flagrant problems or abuses. The DCI is, in turn, required to transmit such reports to the intelligence committees within seven days with any comments he may wish to make. The Committee was concerned that serious problems uncovered by the Inspector General be brought to its attention sooner than every six months. This language is similar to the requirement imposed upon other inspector generals under the 1978 Act, and the Committee saw no reason not to apply it to CIA.

Subsection (d)(3) addresses three types of specific situations where the Inspector General is required to make direct, immediate reports to the Committee. The Committee anticipates that such reports under this category will be rare. Moreover, providing for such contingencies should not be interpreted as implying criticism of any Director of Central Intelligence, past or present. Nor in providing for these extraordinary circumstances does the Committee intend to establish a separate reporting channel other than for the specific purposes identified. The Committee believes, however, that there could arise situations in the future where it would be appropriate for the Inspector General to report directly to the intelligence committees.

Subsection (d)(3)(i) provides that in the event the Inspector General is unable to resolve any differences with the Director affecting the execution of his duties and powers, he shall report such matter to the intelligence committees. It is not intended that differences with the DCI over such matters as CIA policy or management be reported under this provision unless such decisions might preclude the Inspector General from executing his responsibilities. The Committee also intends that any case where the DCI might inhibit or

attempt to inhibit the conduct of any investigation of the Inspector General (apart from exercising his authority under subsection (b)(3) be reported under this provision.

Subsection (d)(3)(ii) requires a direct report to the intelligence committees if, in fact, the Inspector General should conduct an investigation, inspection or audit which focuses upon the Director or Acting Director. It is the intent of the Committee that where the Director comes under investigation for possible wrongdoing, and the Inspector General, for valid reasons, does not wish to disclose this to the Director in the course of an ongoing investigation, the Inspector General should be required to advise the intelligence committees. Although the Committee believes such circumstances are highly unlikely, it believes the statute should allow for this contingency.

Subsection (d)(3)(iii) requires a direct immediate report to the intelligence committees when the Inspector General is unable, after exhausting all alternatives, to obtain significant documentary evidence in the course of an investigation. The Committee has opted for the present not to provide subpoena power to the CIA Inspector General to obtain documents from third parties. The Committee is mindful, however, that there could arise such situations where serious matters are under investigation and the lack of such authority could be crucial. By requiring the Inspector General to report such cases immediately to the committees, it will not only enable the committees to consider whether additional legislative authority is needed, but also will give the committees an opportunity to consider the desirability and feasibility of alternative measures (e.g., intercession with the Attorney General and/or other agency heads; intercession with the party withholding such information; an investigation by the Committee; or a subponea issued by the Committee) to obtain the information in question. The Committee does not intend that the Inspector General come to the committees pursuant to this subsection unless he has exhausted his efforts to acquire such information, and, indeed, the investigation itself raises matters of consequence.

Subsection (e) sets forth the specific authorities of the CIA Inspector General.

Subsection (e)(1) provides that the Inspector General shall have direct and prompt access to the DCI when necessary for the performance of his duties. This is similar to authority provided other Inspectors General.

Subsection (e)(2) provides that the Inspector General shall have such access as he may require for the performance of his functions to CIA employees and the employees of CIA contractors, and to all records of the CIA and its contractors which relate to CIA programs and activities. This subsection further provides that failure to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the DCI. This provision is not intended to require the imposition of administrative sanctions against persons who refuse to testify or provide documentary evidence to the Inspector General in reliance upon rights otherwise guaranteed by law or the Constitution.

Subsection (e)(3) authorizes the Inspector General to receive and investigate certain types of complaints from CIA employees. Once a

complaint is received, the Inspector General is required to keep the identity of the complainant secret unless otherwise authorized by the complainant or the Inspector General determines such disclosure is otherwise unavoidable during the course of the investigation. This subsection also prohibits such complainants from being subject to reprisals of any kind, or threat of such reprisals, because of their complaint to the Inspector General, unless the complaint was made with the knowledge that it was false, or was made with willful disregard of its truth or falsity. This authority is similar to that provided other Inspectors General under the 1978 Act.

Subsection (e)(4) authorizes the Inspector General's Office to administer oaths in the course of its investigations.

Subsection (e)(5) provides that the Inspector General shall be given adequate and approriate office space and related support to carry out his functions.

Subsection (e)(6) authorizes the Inspector General, subject to applicable law and the policies of the DCI, to select, appoint, and employ such officers and employees as may be necessary to carry out his functions. The Committee believes that all persons employed by the Office of Inspector General should meet the personnel and security standards required of other CIA employees. However, once such compliance has been established, the Inspector General should have the authority to determine what employees are hired for, or are temporarily assigned to, his staff. The discretionary authority of the DCI to terminate the employment of any CIA employee pursuant to 50 U.S.C. 403(c) is not, however, affected by this provision. Nevertheless, in any instance where the DCI believes it is necessary to terminate the employment of any Inspector General office employees, he shall inform the Inspector General of the basis for that decision. If the Inspector General disagrees with the decision of the DCI, he shall inform the intelligence committees of the disagreement pursuant to this statute.

Also included in subsection (e)(6) is sense of the Congress provision that the Inspector General should establish a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of his duties.

Subsection (e)(7) provides authority for the Inspector General to request information and assistance from other federal agencies, provided that the DCI concurs in such requests. The Committee believes that due to the intelligence sources and methods that might be disclosed as a result of such requests, that the DCI must exercise ultimate approval authority over them. If, in the opinion of the Inspector General, the DCI should unjustifiably refuse to approve such requests, the matter might be referred to the intelligence committees pursuant to subsection (d)(3).

Subsection (f) requires the DCI to establish a separate line-item in the National Foreign Intelligence Program budget, beginning in fiscal year 1991, for the CIA Office of Inspector General.

Subsection (g) directs the transfer of personnel and assets from the existing Office of Inspector General of CIA to the Office of Inspector General created pursuant to this section. This provision does not preclude the Director from using other Agency components to peform such management studies and analyses as he may direct.

TITLE IX—INTELLIGENCE OVERSIGHT

Section 901.—Repeal of Hughes-Ryan amendment

Section 901 of the bill repeals the Hughes-Ryan Amendment of 1974 so as to consolidate intelligence oversight provisions at a single place in the law and expand the requirement for Presidential approval of covert action to all entities of the United States Government (to parallel Executive Order 12333).

Current statutory provisions for intelligence oversight include the general requirements to inform the House and Senate Intelligence Committees in Title V of the National Security Act of 1947, as amended in 1980, and the requirement of the Presidential approval for CIA covert action in Section 662 of the Foreign Assistance Act of 1961, as amended in 1974 (22 U.S.C. 2422—the Hughes-Ryan Amendment). The differences in language and scope between these provisions, which appear at different places in the statutes, have been a source of unnecessary confusion and disagreement between the branches. Therefore, Section 901 of the bill would repeal the Hughes-Ryan Amendment in order to substitute a new Presidential approval requirement as an integral part of a more coherent and comprehensive statutory oversight framework for covert action and other intelligence activities to be set forth at one place in the law. The superseding Presidential approval requirement is contained in the proposed new section 503 and 504(d) of the National Security Act of 1947, discussed below.

This change is intended to bring the statutes more closely into line with the current Executive Order which requires Presidential approval for covert action by any component of the U.S. Government, not just by the CIA. Section 3.1 of Executive Order 12333 [December 4, 1981] states that "the requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities (the euphemism used for the covert actions) as defined in this Order." Replacing Hughes-Ryan, which applies only to the CIA, with a comprehensive Presidential approval requirement for covert action by any U.S. Government entity gives statutory force to a policy that has previously been a matter of Executive discretion.

Section 902.—Oversight of intelligence activities

Section 902 of the bill would replace the existing Section 501 of the National Security Act of 1947 with three new sections that prescribe, respectively, general provisions for oversight of all intelligence activities, reporting of intelligence activities other than covert actions, and Presidential approval and reporting of covert actions.

Section 501.—General provisions

The new section 501 of Title V of the National Security Act of 1947 would specify the general responsibilities of the President and the Congress for oversight of intelligence activities and reaffirms the basic principles in current law for keeping the House and Senate Intelligence Committees fully and currently informed of in-

telligence activities, including any significant anticipated intelligence activity, without requiring approval by the Committees.

(a) Presidential duty to ensure Congress informed.—Subsection (a) would place a statutory obligation upon the President to ensure that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (referred to in the bill as the "intelligence committees") are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity, as required by this title. Current law imposes such duties on the DCI and agency heads, but not on the President himself. Overall responsibility should be vested in the President because of the importance and sensitivity of secret intelligence activities that may affect vital national interests, and because the President, who exercises authority over all departments, agencies and entities in the Executive branch, may have unique knowledge of such activities. It is contemplated that the President would carry out this statutory responsibility by promulgating policies applicable to the Executive branch which would implement the statutory requirements contained in the bill. Such policies and any changes therein should be reported to the intelligence committees.

The specific terms and conditions for keeping the committees "fully and currently informed" are those set forth in sections 502 and 503, discussed below. The requirement found in existing law that the intelligence committees be advised of "significant anticipated intelligence activities" is carried over in this subsection, and has the meaning discussed below with respect to the same term in section 502 and with respect to the prior notice provisions in subsections 503(c)(1) and 503(d).

Subsection (a) would also retain the qualification in current law that nothing contained in the prior notice requirements shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of such activities. The parallel provision of existing law is clause (A) of paragraph 501(a)(1).

Subsection (a) also contains a second proviso, not expressly found in existing law, which emphasizes that nothing contained in the bill shall be construed as a limitation upon the power of the President to initiate an intelligence activity in a manner consistent with powers conferred by the Constitution. This provision is intended to make clear that the requirements contained in the bill to keep the intelligence committees advised of "significant *anticipated* intelligence activities" (emphasis added) in section 502, below, and to give prior notice of covert actions in accordance with subsections 503(c)(1) and 503(d), below, should not be construed as a limitation upon the power of the President to initiate such activities in a manner consistent with his powers under the Constitution. This maintains the distinction between acting and reporting. This provision is not, however, intended to affect in any way any other requirement contained in the bill, including the requirements for presidential authorization in subsection 503(a) and the requirements for notice to appropriate members of Congress in paragraphs 503(c)(3)–(4).

Although the bill itself does not draw a distinction in terms of the approval and reporting of covert actions in peacetime, and approval and reporting of such activities when a state of war has been declared by the Congress, the Committee recognizes that the President's constitutional responsibility as commander-in-chief would require greater flexibility in a wartime setting and that appropriate adjustments would be necessitated.

(b) Illegal activities.—Subsection (b) would require the President to ensure that any illegal intelligence activity is reported to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity. Under current law, paragraph 501(a)(3) imposes this duty on the Director of Central Intelligence and agency heads, subject to certain qualifications. The purpose of this revised provision is to place an unqualified statutory obligation on the President to ensure reporting of such matters to the committees. It is contemplated the President would carry out this statutory responsibility by promulgating policies applicable to the Executive branch which would implement the statutory requirements in the bill. The definition of illegal activity remains unchanged, but the responsibility to ensure the reporting of such activity is shifted to the President.

The President should establish procedures within the Executive branch for review of intelligence activities that may have been illegal and for reporting to the intelligence committees upon confirmation that the activity was a probable violation of the Constitution, statutes, or Executive order 12333 or successor orders. The current provision requires the reporting of illegal activity "in a timely fashion." This language is deleted because of is ambiguity. The intent is that the committees should be notified whenever a probable illegality is confirmed under the procedures established by the President.

It is recognized that the President may require time to investigate an activity to determine that a probable violation has occurred before reporting to Congress. The procedures will facilitate reporting to the committees appropriate to their oversight responsibilities while protecting the integrity of the criminal investigative process (including grand jury secrecy) and the rights of potential defendants and witnesses. The procedures shall establish criteria for determining whether a probable violation has been confirmed, and may take into account the need to protect sensitive intelligence sources and methods, so long as all germane evidence of the violation is reported. These procedures, and any changes thereto, shall be reported to the intelligence committees.

(c)–(e) Other general provisions.—Subsections (c) and (d) would retain provisions of existing law. Subsection (c) is identical to the current subsection 501(c) that authorizes the President and the intelligence committees to establish procedures to carry out their oversight obligations. With the exception of a minor technical change having no substantive effect, subsection (d) is the same as the current subsection 501(d) that requires the House and Senate to establish procedures to protect the secrecy of information furnished under this title and to ensure that each House and its appropriate committees are advised promptly of relevant information.

Subsection (e) states that the term "intelligence activities," as used in this section, includes, but is not limited to, "covert actions," as defined in subsection 503(e), discussed below.

Section 502.—Reporting intelligence activities other than covert actions

The new section 502 is intended to impose the same reporting requirements imposed by current law insofar as intelligence activities other than covert actions are concerned. This distinction between covert actions and other inelligence activities is discussed more fuly with respect to section 503, below.

Section 502 would continue to impose two duties upon the Director of Central Intelligence (DCI) and the heads of all departments, agencies and other entities of the United States involved in intelligence activities. Both duties would continue to be conditioned upon the preambular clause beginning the section which recognizes the need to protect sensitive classified information, discussed more fully below.

Fully and currently informed

The first duty is set forth in subsection 502(a) which requires the officials designated in the introductory clause to keep the intelligence communities fully and currently informed of all intelligence activities, other than covert actions as defined in subsection 503(e) which are the responsibility of, engaged in by, or are carried out for or on behalf of, any such department, agency, or entity of the United States engaged in intelligence activities, including any significant anticipated intelligence activity and significant failures. This maintains obligations imposed by current law. The requirement to report significant anticipated activities means, in practice, that the committees should be advised of important new program initiatives and specific activities that have major foreign policy implications. The obligation to report significant intelligence failures is contained in subsection 501(a)(3) of current law. In addition, the bill deletes the special procedures for prior notice of intelligence activities other than covert actions to eight congressional leaders in the current clause (B) of paragraph 501(a)(1) of current law, because it was primarily intended to apply to covert actions, to be governed by section 503, discussed below.

In carrying out these obligations, It is not intended that where multiple agencies or entities are involved in carrying out a particular activity, or where multiple levels of bureaucracy are involved in approving a particular activity, that duplicative reports need to be made to the committees by every element of the Government so involved. It is intended that the DCI and the heads of all departments, agencies or entities involved in intelligence activities all be obligated in terms of ensuring that the committees are kept fully and currently informed. But duplicative reports of the same activity are not required. Where lines of authority and command exist between such officials, the official of highest authority may represent subordinate agencies or entities to the committees. In this respect, there is no change from practice under existing law.

As mentioned above, this requirement is subject to the preambular clause regarding the protection of sources and methods, discussed below.

Furnishing pertinent information

Subsection 502(b) would impose a second obligation upon the officials deisgnated in the introductory clause to furnish the intelligence committes any information or material concerning intelligence activities (other than covert actions) which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities. This provision maintains existing law, and is subject to the preambular clause regarding the protection of sources and methods, discussed below.

Protection of sensitive sources and methods

The obligations imposed by this section to keep the intelligence committees fully and currently informed and to provide information upon request are to be carried out to the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods and other exceptionally sensitive matters. The language is similar to the second preambular clause in subsection 501(a) of the current law, which impose duties "to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods." The proposed new language more accurately reflects and is intended to have the same meaning as the legislative history of the similar preambular clause in existing law. It is intended to apply only to classified information relating to sensitive intelligence sources and methods and to "other exceptionally sensitive matters." This latter phrase is intended to refer to other extremely sensitive categories of classified information such as information concerning the operational details of military deployments, and extraordinarily sensitive diplomatic contracts, which the intelligence committees do not routinely require to satisfy their responsibilities.

One change is made in existing law. The first preambular clause in the current subsection 501(a) would be deleted. It imposes obligations "[t]o the extent consistent with all applicable authorities and duties, including those conferred upon the Executive and Legislative branches of Government." This clause creates unnecessary ambiguity in the law, because it has been interpreted by some as Congressional acknowledgment of an undefined constitutional authority of the Executive branch to disregard the statutory obligations. Recent experience indicates that legislation qualifying its term by reference to the President's constitutional authorities may leave doubt as to the will of Congress and thus invite evasion. Legitimate Executive branch concerns are adequately met by this provision for due regard for protection of certain sensitive classified information, discussed above. Moreover, the absence of the current preambular clause does not affect the ability of the Executive branch to object to the production of information based upon the assertion of the constitution of claim of Executive privilege, to the extent that such privilege exists in law.

Section 503.—Presidential approval and reporting of covert actions

Covert actions raise fundamentally different policy issues from other U.S. intelligence activities because they are an instrument of foreign policy. Indeed, constitutional authorities draw a distinction between Congressional power to restrict the gathering of information, which may impair the President's ability to use diplomatic, military, and intelligence organizations as his "eyes and ears," and Congressional power to regulate covert action that goes beyond information gathering. Congress has the constitutional power to refuse to appropriate funds to carry out covert actions and may impose conditions on the use of any funds appropriated for such purposes.

Under current law, however, the Congressional mandate is ambiguous, confusing and incomplete. There is no express recognition in statute of the President's authority to conduct covert actions; the requirement for Presidential approval of covert actions applies only to the CIA; and Presidential approval procedures are not specified. There is arguably a question whether Congress has intended that the President have authority to conduct covert actions that may violate other applicable statutes. The statutory requirements for informing the intelligence committees of covert actions are subject to misinterpretation, and the scope of activities covered by the law is undefined. This bill seeks to remedy these deficiencies so that covert actions are conducted with proper authorization in the national interest as determined by the elected representatives of the American people—the President and the Congress—through a process that protects necessary secrecy.

(a) Presidential findings.—Subsection (a) would provide statutory authority for the President to authorize the conduct of covert actions by departments, agencies or entities of the United States, including the Executive Office of the President, only when he determines such activities are necessary to support the foreign policy objectives of the United States and are important to the national security of the United States. This determination must be set forth in a "finding" that meets certain conditions. The importance of this requirement is underscored by Section 903 of the bill, discussed later, which prohibits expenditure of funds available to the U.S. Government to initiate any covert action unless and until such a presidential finding has been signed or otherwise approved in accordance with section 503.

The current presidential approval provision in the Hughes-Ryan Amendment (22 U.S.C. 2422) requires a finding by the President "that each such operation is important to the national security of the United States." The proposed new subsection 503(a) would require the President to make an additional determination that the activities "are necessary to support the foreign policy objectives of the United States." This conforms the statute to the Executive branch definition of "special activities" in section 3.4(h) of Executive Order 12333 which refers to "activities conducted in support of national foreign policy objectives abroad." The President should determine not only that the operation is important to national security, but also that it is necessary to support U.S. foreign policy objectives. It is intended that the intelligence committees will establish

procedures to obtain an analysis of this issue with respect to each finding as part of their routine oversight functions.

In addition to reflecting these presidential determinations, findings must meet five conditions.

First, paragraph 503(a)(1) would require that each finding be in writing, unless immediate action is required of the United States and time does not permit the preparation of a written finding, in which case a written record of the President's decision would have to be contemporaneously made and reduced to writing as soon as possible but in no event more than 48 hours after the decision is made. This requirement is intended to prevent a President's subordinate from later claiming to have received oral authorization without further substantiation than the subordinate's undocumented assertion. It is also consistent with the President's current policy of requiring written findings.

Second, paragraph 503(a)(2) would restate the existing legal ban on retroactive findings. It would provide that a finding may not authorize or sanction covert actions, or any aspects of such activities, which have already occurred. This is also consistent with the President's current policy.

Third, the first clause of paragraph 503(a)(3) would require that each finding specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in the covert actions authorized by the finding. Specification of additional participating entities may be done in a subsequent amending document approved in the same manner as the original finding. This requirement is consistent with section 1.8(e) of Executive Order 12333 which states that no agency except the CIA in peacetime may conduct any special activity "unless the President determines that another agency is more likely to achieve a particular objective". It is intended that the finding identify all entities of the Government who are authorized to provide other than minimal, routine, and incidental support of the covert actions subject to the finding. For example, it is not intended that departments, agencies, or entities which provide routine, incidental and minimal administrative, personnel, or logistical support to the agency primarily responsible for the covert actions in question need be named in the finding itself. It should be emphasized that the term "significant" is intended to exclude from identification in a finding only de minimus participation, such as permitting use of secure communications systems, refueling or servicing aircraft, maintenance of equipment, obtaining overflight clearances or landing rights, which support is routinely provided among agencies for other purposes. However, where such support is not routinely provided, the department, agency, or entity providing such support must be identified in the finding itself. In arriving at this determination, the number of employees at a particular department, agency, or entity who are to be involved in the covert action concerned is not a determining factor; rather, it is the nature of such involvement as it relates to the conduct of the covert action. Moreover, it is intended that the intelligence committees should pursue in detail the involvement of each department, agency, or entity with respect to each finding to ensure that the spirit, as well as the letter, of this provision are satisfied.

Where an "entity" is a subordinate component of an "agency" or "department", or where an "agency" is a subordinate component of a "department", the highest level organization shall be named in the finding.

The proviso at the end of paragraph 503(a)(3) imposes a further requirement that any employee, contractor, or contract agent of the United States Government who is directed to participate in any way in a covert action must be subject either to the policies and regulations of the Central Intelligence Agency, or to the policies and procedures of the parent agency with whom he or she is affiliated. It is the primary intent of this provision to ensure that any government employee or contractor who is utilized to carry out or support a covert action is bound by appropriate policies and regulations which ensure compliance with applicable law and with Executive policy. Where the parent agency of the employee or contractor concerned is responsible for the conduct of, or support to, a covert action, there should be agency regulations to govern their participation. Where the parent agency is assigned primary responsibility for conducting a covert action, there should be overall agency policies governing this type of activity. Where the parent agency is assigned a support role, there similarly should be agency regulations which govern the provision of support to other agencies. Indeed, such support may be governed by agency regulations having nothing to do with covert actions per se, so long as they ensure compliance by the employee or contractor with applicable law and Executive policy. Finally, there should be no circumstance where an employee or contractor of one department or agency is detailed to, or placed under the operational control, another department or agency, and is uncertain whether the policies of his parent agency apply, or the policies of the gaining agency. This should be a matter of agreement between the two agencies in all cases, should be consistent with and pursuant to established regulations and procedures, and should be made clear to the employee or contractor concerned.

Fourth, paragraph 503(a)(4) would require that each finding specify whether it is contemplated that any third party, which is not an element of, contractor of, or contract agent of the United States Government, or is not otherwise subject to U.S. Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or will be used to undertake the covert action concerned on behalf of the United States. One purpose of this provision is to require the President to approve specifically the use of third countries or private parties outside normal U.S. Government controls to implement a covert action in any signficant way. The finding itself need state only whether such use is contemplated, without actually identifying the third party (or parties) concerned. Additional information concerning the involvement of such third parties may be provided to the intelligence committees in accordance with subsection 503(b), discussed below, as required.

As used in this paragraph, the term "significant" is intended to encompass all but routine, minimal support to U.S. Government activities, which are incidental to the conduct and successful completion of the covert action in question. For example, where a third

country routinely provides overflight clearances or landing rights to U.S. aircraft for a variety of purposes, its providing such clearances or landing rights for an aircraft involved in a covert action would not be considered "significant", in the context of the requirement for acknowledgment in a finding.

Fifth, paragraph 503(a)(5) would maintain current Executive Order restrictions that preclude a finding from authorizing any action intended to influence domestic political processes, public opinion, policies or media. This prohibition is taken from the definition of "special activities" contained in section 3.4(h) of Executive Order 12333, and has been longstanding policy within the Government. While it is recognized that activities intended to have their impact abroad may be reported in the U.S. media, it is intended that no covert action may have as its purpose influencing political activity, policy, or media within the United States by instituting or influencing events which are undertaken either inside or outside the United States.

Sixth, paragraph 503(a)(6) would establish that a finding may not authorize any action that violates the Constitution of the United States or any statute of the United States. This is similar to section 2.8 of Executive Order 12333, which states that nothing in that Order "shall be construed to authorize any activity in violation of the Constitution or statutes of the United States." Current CIA policy is to avoid violation of any federal statutes which apply to covert actions, either directly or which apply to government agencies in general. However, CIA possesses statutory authorities to carry out its authorized functions that are unavailable to other government agencies. This provision is not intended to require that covert actions authorized in presidential findings need comply with statutory limitations which, by their own terms, apply only to another U.S. Government program or activity. For example, a statutory restriction on the overt Defense Department arms transfer program would not apply to covert CIA arms transfers authorized in a finding, even if the CIA obtained the arms from the Department of Defense under the Economy Act. Similarly, statutes which may prohibit conduct by private parties may not be applicable to the CIA or other government agencies because of the absence of the mens rea necessary to the offense. For example, the Justice Department takes this view with respect to the Neutrality Act. In short, there may be covert actions undertaken by the CIA which do not violate U.S. statutes because the statutes themselves do not apply to the CIA. Nonetheless, the effect of undertaking such an activity would, if disclosed, undermine the public policies set forth in such statutes. In theory, there may be rare circumstances where this result is justified. However, any such case deserves intense scrutiny by the Executive branch, and by the intelligence committees, in their respective reviews of covert actions. It is intended that the intelligence committees will establish procedures to obtain any analysis of the impact, if any, of existing statutes on each proposed covert actions as part of their routine oversight functions.

(b) General reporting provisions relating to cover actions.—Subsection 503(b) establishes the general requirements to govern reporting of covert actions to the intelligence committees. Its structure parallels the structure set forth in section 502 for the reporting of

intelligence activities, other than covert actions. The reporting requirements are imposed upon the DCI, and the head of any department, agency, and entity of the Government involved in a covert action.

Fully and currently informed

The first reporting obligation, set forth in subsection 503(b)(1), is to keep the intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures. This provision maintains the obligations imposed by current law, although the phrase "including significant failures" has been extracted from the general requirement in subsection 501(a)(3) of current law, and applied specifically to covert actions. This parallels the addition of this same phrase to sections 502, for the same reasons as explained above.

In carrying out this obligation, it is not intended that where multiple agencies or entities are involved in a particular covert action, or where multiple levels of bureaucracy are involved in approving a particular covert action, duplicative reports need be made to the committees by every element of the Government so involved. It is intended, however, that the DCI and the heads of depatments, agencies and entities involved in such activities each be obligated to ensure that the committees are kept fully and currently informed. But duplicative reports of the same involvement are not required. Where lines of authority and command exist between such officials, the official of highest authority may represent subordinate agencies or entities to the committees. In this respect, there is no change from practice under current law.

The requirement to keep the intelligence committees fully and currently informed is subject to the preambular clause regarding the protection of certain classified information, which is identical to the preambular clause in section 502, and which bears the same meaning, as explained above.

It is also to be noted that there is no specific requirement in subsection (b)(1) to apply the formulation "significant anticipated intelligence activity" to covert actions as under current law. This becomes redundant in view of the reporting requirements for covert actions set forth in subsection 503(c), below.

Furnishing pertinent information

Subsection 503(b)(2) would continue to impose a second obligation upon the officials designated in the introductory clause to furnish the intelligence committees any information or material concerning covert actions which is in their possession, custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities. This requirement is imposed under current law.

The requirement to furnish pertinent information requested by the intelligence committees concerning covert actions is subject to the preambular clause regarding the protection of certain classified information, which is identical to the preambular clause in seciton 502, and which bears the same meaning, as explained above. It also

has the same intent as the second preambular clause in subsection 501(a) of current law. Moreover, as discussed above, with respect to section 502, the absence to the first preambular clause in the current subsection 501(a) does not affect the ability of the Executive branch to object to the production of information based upon the assertion of the constitutional claim of Executive privilege, to the extent that such privilege exists in law.

(c) Notice of findings.—Subsection 503(c)(1) sets forth the requirement that in ordinary circumstances the intelligence committees will be advised of all findings or determinations made pursuant to subsection 503(a), prior to the initiation of the covert action in question. The President is made responsible for ensuring that this is done.

Moreover, it should be emphasized that no actions whatsoever may be taken to implement a covert action prior to the time the finding is signed or the oral determination, pursuant to subseciton 503(a)(1), is made. This is not intended, however, to preclude necessary planning for such activities, including gathering intelligence and other information to determine whether such activities are feasible.

The subsection does recognize certain exceptions to this general requirement of notice to the intelligence committees, as set forth in subsecitons (2) and (3), explained below.

Notice after the initiation of a covert action

Subsection 503(c)(2) permits the President on rare occasions when time is of the essence, to initiate a covert action without first reporting it to the two intelligence committees. However, the subsection makes clear that in any case where prior notice of a covert action is not provided the committees, the President will ensure that the committees are provided such notice in a timely fashion and shall provide a statement of the reasons for not giving prior notice. While the Committee anticipates that it will ordinarily receive notice of all covert actions before they are implemented, it recognizes there maybe exigent circumstances where the President needs to act immediately to protect United States interests. In permitting such flexibility, however, the Committee does not intend to authorize by statute any substantial departure from existing practice, which has been to ensure such notice is provided to the committees within a few days.

Notice to eight Members of Congress

Subsection 503(c)(3) permits the President, when he determines it essential to meet extraordinary circumstances affecting vital interests of the United States, to provide the notice required under eight subsection (c)(1) or (c)(2) to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. In other words, the President could utilize this option either in giving prior notice of a covert action, or in giving notice after initiation. In such case, the President must provide a statement of the reasons for limiting such notice at the time it is made. This alternative is available to the President under current law.

Copies of findings

Subsection (c)(4) requires that when notice of covert actions is provided the intelligence committees under subsections (c)(1), (c)(2), or (c)(3) (by notification of the chairmen and ranking minority members), that a copy of the finding, signed by the President, will be provided to the chairman of each intelligence committee. When the finding is orally approved pursuant to subsection 501(a), and is reported orally to the Congress pursuant to subsection 503(c), this means that a copy of the finding must nonetheless be provided to the chairmen of the intelligence committees once it is reduced to writing.

(d) Notice of significant changes.—Subsection 503(d) sets forth the requirements to keep the Congress advised of significant changes to covert actions which have been previously authorized and reported. It provides that all such reports be made in the same manner as the original finding was reported in accordance with subsection 503(c), permitting the President the same options as discussed above with respect to such subsection.

As with the reporting of findings in general, the President is made personally responsible for ensuring that significant changes are reported. It is contemplated that the President would carry out this responsibility by promulgating policies applicable to the Executive branch which would implement the statutory requirements in the bill.

Two types of significant changes are expressly mentioned in the subsection. The first pertains to significant changes in a previously-approved finding. This would occur when the President authorizes a change in the scope of a previously-approved finding to authorize additional activities to occur. The second type of change specified in this subsection pertains to significant undertakings pursuant to a previously-approved finding. This would occur when the President authorizes a significant activity under a previously-approved finding without changing the scope of the finding concerned.

(e) Definition of "Covert Action".—Subsection 503(e) contains a new definition of "covert action." It is intended to supersede the current references to CIA "operations" abroad under the Hughes-Ryan Amendment and "special activities" as defined by Executive Order 12333. The new definition would generally reflect current practice as it has developed under the Hughes-Ryan Amendment and the Executive Order definition of "special activities."

The need for a new definition of covert action arises from the fact that there are now two definitions, one in law and one in Executive Order, the former explained and post-dated by the latter; and neither of which encompasses all of the understood or asserted exceptions applied by the Executive branch. Hughes-Ryan was intended to be only a temporary measure which would be further refined by Congressional review of covert action operations. In fact, since the 1974 enactment of the Hughes-Ryan Amendment, the Central Intelligence Agency in particular and the Executive branch in general have interpreted that legislation to narrow its apparent broad sweep by applying subsequently—promulgated Executive Order definitions of special activities and have developed various exceptions, based on interpretations of Congressional

intent, that have been applied as precedent in practice. The result has been a sometimes confusing list of exceptions and case-by-case determinations that have left both the Executive and Legislative branches uncertain as to the outside parameters of covert action.

However, it seems clear that certain activities such as covert paramilitary operations, propaganda, political action, election support and related activities have been generally understood to be covert action. Other activities that may literally fall within the definitions but for which it would be impractical to seek Presidential approval and report to Congress on a case-by-case basis, have been assumed not to be covert action. To some extent, Congress has known of and acquiesced in this practice and has worked with the Executive branch to develop mutually agreeable understandings of the reach of the reporting requirements.

In attempting to reconcile the current definitions, the bill opts for a broad general definition—i.e., the approach employed by the Hughes-Ryan drafters—but with the addition of explicit enumerated exceptions to that general definition, the approach employed in a limited way by the drafters of Executive Order 12333.

In accordance with this overall approach, the core definition of covert action should be interpreted broadly. That is why, for instance, the requirement, found in the definition of "special activities" under Executive Order 12333, that the activities be "in support of national foreign policy objectives abroad" has not been retained here. The foreign policy interests of the United States are so broad that any covert operation abroad is likely to be in support of some foreign policy objective. The definition also removes the possibility of ambiguity presented by previous Administration arguments that sought to distinguish the foreign policy of the United States from the defense policy of the United States. Furthermore, this phrase is not so much a definitional element, as a limitation of covert action, and one which is reflected in the Presidential determination required by section 503(a). Thus, the definition encompasses activities to influence conditions—be they political, economic, or military—overseas and focuses on the objective features of the activity, rather than on a formal relationship to foreign policy purposes, as the controlling test in determining which activities constitute covert action.

Further, the reference in the body of the definition to activities "conducted by an element of the United States Government" means that the activity or activities to be conducted must be examined in terms of each element of the United States Government that will be involved in a particular area to determine if the activity of that element is a covert action. It may be that an activity which is not a covert activity may be supported by an element of the government, for example an intelligence element, whose particpaton does constitute a covert action. Thus, an operation conducted by the uniformed military forces may not be a covert action but the unattributable efforts of the CIA in support of that activity may be a covert action.

This raises another key element of the core definition, the meaning of covertness. Covert action must be an activity where the "role of the United States Government is not intended to be apparent or acknowledged publicly." It is important to distinguish in this con-

text between operations that are merely clandestine and those that are covert. Clandestine activities are those that are conducted secretly but which, at some time after their completion, may be acknowledged by the United States. A good example is a clandestine military deployment which, although kept secret before it occurs, can be acknowledged after it has taken place, in part because, at that point, it cannot be kept secret.

A cover operation may or may not be clandestine, i.e., the activity itself may or may not be visible or public. Its essential nature, however, is that the role of the United States in the activity is not intended to be acknowledged. The United States, in other words, seeks a form of plausible denial to the outside world. This deniability would not, of course, apply to those within the United States Government who have a need to know about such activities, including the intelligence oversight committees.

Thus, the basic definition of a covert action retains the same level of general comprehensiveness as is now applied to determine whether activities constitute covert action operations, subject, however, to certain exceptions that are explained further below. The definition is intended to apply uniformly and equally to all elements of the U.S. Government.

Subsection (e)(1) is the first exception to the general definition of covert action. It lists first "activities the primary purpose of which is to acquire intelligence." This represents a change from the language of the Hughes-Ryan Amendment, which excluded activity only if its sole purpose was the collection of necessary intelligence. The primary purpose test nonetheless reflects actual practice since 1974. It appears that neither the Central Intelligence Agency nor the Congress have actually applied the sole-purpose test since the enactment of the Hughes-Ryan Amendment. What has applied is a rule of reason that treats as intelligence collection activities which such as intelligence liaison relationships that produce intelligence indirectly or have other incidental results. By requiring a primary purpose test, however, the bill does not seek to create an avenue for designing operations to avoid the covert action requirements or to change the high threshold traditionally distinguishing covert action from intelligence collection operations.

Subsection (e)(1) also excludes from the definition of covert action operations "traditional counterintelligence activities." The bill uses the word "traditional" several times throughout the new definition. It is intended to be understood in the sense of being usual, accepted customary practice—practice that is acknowledged and understood to fall within accepted parameters. This does not mean that every possible variation of counterintelligence operation or technique must have an exact precedent to be included within the exception. However, it does require that "traditional" counterintelligence hew to the purpose of, in the words of the Executive Order, gathering information or conducting activities "to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for on behalf of foreign powers, organizations, or persons or international terrorist activities." Such activities generally include double agent operations and operations to frustrate intelligence collection activities by hostile foreign powers.

Traditional counterintelligence, however, does not include the use of a counterintelligence operation or counterintelligence assets for purposes other than those that are described as counterintelligence above. For instance, efforts to deceive or influence a hostile foreign power where such actions could have a significant effect on the perceptions, policies or actions of such foreign power beyond the ordinary objectives of counterintelligence operations are not considered to be traditional counterintelligence activities.

Subsection (e)(1) also lists "traditional activities to improve or maintain the operational security of United States Government programs" as an exception from the definition of covert action. This phrase encompasses most programs and activities of the Department of Defense or other departments or agencies of the United States Government that are intended to improve or maintain the security of their personnel, activities and facilities.

Operational security includes a variety of techniques, such as concealment of military activities and physical and communications security activities, whose purpose is to deny hostile powers access to, or information concerning, U.S. activities. Many, but not all, of the military's camouflage, concealment, cover and deception operations are included in this category. Thus, the use of U.S. military resources, such as items of military equipment, communications systems, etc., for operational security purposes falls within the ambit of the exception.

However, when efforts at deception—both in terms of the methods employed and of the intended effect of military, political or economic conditions overseas—are such that they depart from the essential purpose of tactical protection of United States military activities and covertly attempt to change foreign perceptions in a strategic or significant fashion, they should be considered covert action.

Operational security activities, when conducted by the military, are a subset of military activities, described further below. They have been exempted by this definition because of concern that some legitimate military operational security activities arguably could be considered covert action operations. While the bill does not intend to convert security activities into covert action, neither does it intend that military activities that should be considered covert action operations may be considered to be excluded from the definition of covert action simply by calling them traditional military operational security activities. However, it is not intended that such matters as concealing maneuvers of military units by using cover and deception, the use of different frequencies in peacetime, etc., be considered covert action.

The final element excluded under subsection (e)(1) is "administrative activities." This term is intended to include activities to pay and support the presence of U.S. intelligence or other elements overseas and in the United States. Such activities should not be considered to be covert action as long as they are restricted to providing support for U.S. employees who are capable of performing a range of tasks, including covert action operations. The use of this exception applies only to employees of the United States Government and related housing, pay, benefits and allowances that pertain to them.

Subsection (e)(2) exempts "traditional diplomatic activities" from the definition of covert action. It includes the use of diplomatic channels or personnel to pass messages and conduct negotiations between the United States and other governments of foreign entities. Traditional diplomatic activities, in this context, include activities long understood and accepted to be diplomatic in nature. They do not include activities that cannot reasonably be considered to be diplomatic in character, despite characterizations by some administration officials, such as the covert sales of arms to Iran. Such an operation went well beyond the traditional and accepted definition of diplomatic because of the means employed.

Subsection (e)(2) also refers to "routine support" to traditional diplomatic activities. Routine, in this sense, means ordinary support. What is contemplated by this phrase is relatively minor, often administrative activities that are an adjunct to a diplomatic communications facilties or personnel to pass diplomatic messages, or providing a safe house for a meeting between U.S. officials and foreign officials. What is not included would be activities of intelligence elements that in themselves represent separate efforts to covertly influence events overseas as well as provide support to diplomatic activities. In other words, routine support cannot become a "backdoor" instrument of covert action.

Subsection (e)(2) also exempts "traditional military activities" and "routine support" to such activities. Traditional military activities encompass almost every use of the uniformed military forces, including actions taken in time of war or where hostilities with other countries are imminent or ongoing. This does not, however, preclude the possibility that military units, whether or not they are intelligence units, could be used in operations that constitute covert action aand would require a finding. This emphasizes the importance of examining a particular military activity in light of its specific purpose, the manner in which it is to be accomplished, and the role—including the question of attribution to the U.S. Government or to the entity involved—of the particular element that will perform it.

This qualification is best understood in connection with defining covert action so as to ensure that activities for which CIA would have to obtain a covert action finding under current law and practice will require a finding under subsection 503(e) whether performed by CIA, a military unit or some other element of the U.S. Government.

An area of activity that must be examined carefully in this context is rescue missions or counterterrorist activity. Each element that must participate in some way in such activities must be looked at to determine whether its role falls within the definition of covert action or one of the exceptions. For example, an overt military operation such as the 1980 Iran rescue mission is not a covert action. That operation was conducted by uniformed military units and was always intended to be acknowledged by the United States. However, CIA support (not intelligence collection) to the rescue operation in Tehran was not intended to be acknowledged and was covert action. The bill contemplates that rescue missions and counterterrorism activities—by whatever element conducted "will continue to be scrutinized carefully to ascertain whether or

not they constitute covert action in light of appropriate CIA precedent.

The bill also recognizes, however, that routine support to military activities may include a limited range of secret, non-active assistance to military operations (including hostage rescue or counterterrorism operations) such as the provision of false documentation or foreign currency. What is not included in routine support would be activities of intelligence elements that in themselves represent separate efforts to covertly influence events overseas as well as provide support to military activities. In other words, routine support cannot become a "backdoor" instrument of covert action.

Subsection (e)(3) exempts "traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities." Traditional law enforcement activities include activities such as those of the FBI to apprehend, or otherwise cooperate with foreign law enforcement authorities in the apprehension of those who have violated U.S. laws or the laws of other nations. It includes Drug Enforcement Agency and State Department assistance provided at the request, or with the consent, of other countries in the destruction or interdiction of narcotics supplies or products within such countries. In each case, it is necessary to distinguish activities which are to be acknowledged by the United States from those which are not and which otherwise meet the test of a covert action. In other words, the fact that an operation is conducted by a law enforcement agency does not alone determine whether the operation is a traditional law enforcement activity.

Routine support to such activities that would not rise to the level of a covert action would include the loan of equipment or certain kinds of training (for example, training in ~~the~~ use ~~of~~ loaned equipment, or the provision of intelligence), to a law enforcement agency by an intelligence agency. As the case of routine support to traditional diplomatic activities, what is not included in the concept of routine support to traditional law enforcement activities would be activities of intelligence elements that in themselves represents separate efforts to covertly influence events overseas as well as provide support to law enforcement activities. Routine support cannot become a backdoor instrument of covert action.

Subsection (e)(4) provides a limited exception for activities not covered by subsections (e)(1), (2), or (3). The exception permits "routine support" to the "overt activities" of "other United States Government agencies abroad." An example of such support might involve the loan of equipment by an intelligence agency to another U.S. Government element to assist it in the conduct of its authorized activities. Routine support has the same general meaning and limitations as that term is used above.

Section 903.—Limitation on use of funds for covert actions

Section 903 of the bill redesignates section 502 of the National Security Act of 1947, which concerns the funding of intelligence activities, as section 504 of the Act. It also makes a technical amendment to conform subsection 502(a)(2) of the existing statute to the numbering used in this bill. Finally, it adds a new subsection (d) which deals with the use of funds for covert actions.

This provision is intended to carry forward and expand the limitation currently contained in 22 U.S.C. 2422 (the Hughes-Ryan Amendment), which would be repealed by Section 1 of the bill. The Hughes-Ryan Amendment restricts the use of funds appropriated to CIA to carry out actions outside the United States for "other than the collection of necessary intelligence", unless and until the President had determined that such actions were important to the national security.

Section 504(d) would similarly provide that appropriated funds could not be expended to implement covert actions until the President had signed, or otherwise approved, a finding authorizing such activities, in accordance with subsection 503(a) but it would expand this limitation to cover the funds appropriated for any department, agency, or entity of the Government, not solely CIA. It would cover any appropriated funds, whether or not appropriated for the covert action contemplated. It would also cover non-appropriated funds which are available to such departments, agencies, or entities from any source, over which such department, agency, or entity exercises control. These might include funds provided by third parties, funds which are in the possession or custody of third parties but over which the U.S. has authority to direct disbursements, and funds produced as a result of intelligence activities (i.e. proprietaries). The limitation contained in section 504(d) would also apply regardless of whether the department, agency, or entity concerned actually came into possession of the funds, so long as it had the ability to direct the expenditure of such funds by the possessing agency or third party. This bar on expenditures would not preclude the payment of salaries or other expenses necessary for the planning of a covert action, as explained in the analysis of subsection 503(c)(1), above.

Section 904.—Redesignation of section 503 of National Security Act of 1947

Section 904 redesignates section 503 of the National Security Act of 1947 as section 505, to conform to the changes made by the bill.

Committee Action

On October 26, 1989, the Select Committee approved the bill as amended and ordered it favorably reported.

Evaluation of Regulatory Impact

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred in implementing the provisions of this legislation.

Changes in Existing Law

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

ADDITIONAL VIEWS OF SENATOR JOHN GLENN

I am very pleased that the Committee has seen fit to report out legislation creating a statutory Inspector General's (I.G.) Office at the Central Intelligence Agency (CIA). I believe the I.G. concept has worked extremely well at other agencies—including agencies with extremely sensitive national security missions such as the Department of Defense and the Department of Energy.

I was also pleased that the bill's author, Senator Specter, and the Committee were willing to accommodate my desire for numerous enhancements of the original legislation in order to bring the bill into greater accord with the I.G. Act. These changes included:

Requiring notification of the Committees where the I.G. believes problems focus upon the DCI, or serious problems are found at the agency;

Requiring I.G. access to CIA personnel and contractors;

Providing for a separate budge line for the I.G.'s office;

Allowing the I.G. to hire and fire his own staff, subject to CIA clearance procedures; and

Giving the I.G. adequate housekeeping powers; (1) access to CIA facilities; (2) power to administer oaths; (3) imposition of GAO audit standards as the basis of the I.G. work; (4) allowing the I.G. to comment on legislation; and other provisions.

These and numerous other changes make the I.G.'s office far more likely to succeed. Clearly, the nature of the CIA's mission also requires some changes and accommodations from the standard model of the I.G. Office. For example, I have no objection to restricting the reporting relationship of the CIA I.G. to the Intelligence Committee. Normally, all I.G.s also report to the Senate Governmental Affairs Committee, which I chair, and the House Government Operations Committee. I am less sanguine about the wisdom of other departures from the I.G. Act. For example:

The I.G. has not been given subpoena duces tecum power which all other I.G.'s utilize;

The normally straight-forward reporting relationship of the I.G. to the Attorney General has been clouded by requirements that criminal referrals only be made pursuant to CIA guidelines; and

The I.G. will only routinely obtain the assistance of other Federal agencies by checking with the CIA Director in each instance.

These additional tools would provide a meaningful addition to the I.G.'s powers and independence, without threatening CIA "sources and methods". Should another "Iran-Contra" affair occur, these powers would be necessary to permit the I.G. to uncover whatever inappropriate activity there might or might not be.

The events of the 1980's have demonstrated that a statutory CIA I.G. and a vigilant Congressional oversight mechanism are neces-

sary to detect and prevent "off the books" operations amongst White House staff and Intelligence Community personnel. The current bill should be enacted as soon as possible.

VIEWS OF SENATORS BRADLEY, DANFORTH, HOLLINGS, AND MURKOWSKI

We see no compelling need for or great value in a statutory Inspector General (IG) at CIA, but we do see some real risks and disadvantages. This legislation makes major structural changes inside the CIA and would also change CIA's relationship with Congress and the President. Yet the committee held only one hearing on this issue, over a year ago, and that hearing barely scratched the surface.

We remain unpersuaded that a statutory IG is appropriate for the CIA simply because all other major executive agencies have one. The CIA is not a typical line agency or department. It deals with clandestine sources and foreign intelligence services whose confidence is important. The DCI must have clear and sole control over dissemination of sensitive information.

A statutory IG represents a break with 42 years of tradition in which only two positions at CIA have been appointed by the President and subject to Senate confirmation, the Director and Deputy Director of Central Intelligence. (In all other executive branch agencies and departments, the IG is just one of a sizable number of Presidential appointees.) A Presidentially appointed IG at CIA would thus outrank all line managers below the head of the agency and his principal deputy, including the Deputy Directors for Intelligence, Operations, Administration, Science and Technology, and Planning and Coordination.

We have a dim view of giving the CIA's Inspector General more political status and bureaucratic clout than any of the five Deputy Directors of CIA who are responsible for making the agency work. It is bad management policy to elevate the nay-sayers, inquisitors, and evaluators—i.e. management inspectors, criminal investigators, and financial auditors—over the line managers. A statutory IG would inevitably mean more bureaucarcy, more regulation, more outside intervention, when the real need is to make CIA more productive, more skilled and more useful in confronting a variety of difficult national challenges.

This action would set up a separate organization and power base within the CIA, with a separate personnel structure, separate lines of authority and communication. The result would be the establishment of an "outsider" group within the CIA. For this reason, DCI Webster has said that "the imposition of a statutory Inspector General may actually prove to be counterproductive to the effective inspection and investigation process at CIA."

When Judge Webster because DCI, he initiated a series of reforms to strengthen the role and functions of the office of the CIA IG. Reforms are still underway, and DCI Webster has pledged further improvements in training and staffing the IG's office. Last year, when the committee considered a statutory IG, it endorsed

the DCI's plan and deferred action on legislation in order to give the DCI's initiatives time to take effect. We believe the committee should continue to work with DCI Webster in reforming the current CIA IG's office.

The committee's interest in this legislation is purportedly due to its dissatisfaction with the performance of the IG's office at CIA. Yet there has been no clear or convincing diagnosis by this committee of a problem that can only, or best, be solved by creating a statutory IG. The committee has not conducted a review of the improvements to the CIA IG under DCI Webster. Nor has the committee sought any testimony from the current or previous Inspectors Generals in the CIA concerning their performance or what is needed most to improve it. Nor has the committee made recommendations about how to further improve the IG, short of this legislation. Indeed, the committee has only reviewed a tiny fraction of the reports that the IG's office has produced since 1986. The quality of work by the IG has been uneven, so far as we know, but it seems to have improved significantly since Judge Webster initiated reforms.

We therefore voted in opposition to the creation of a statutory Inspector General at CIA.

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